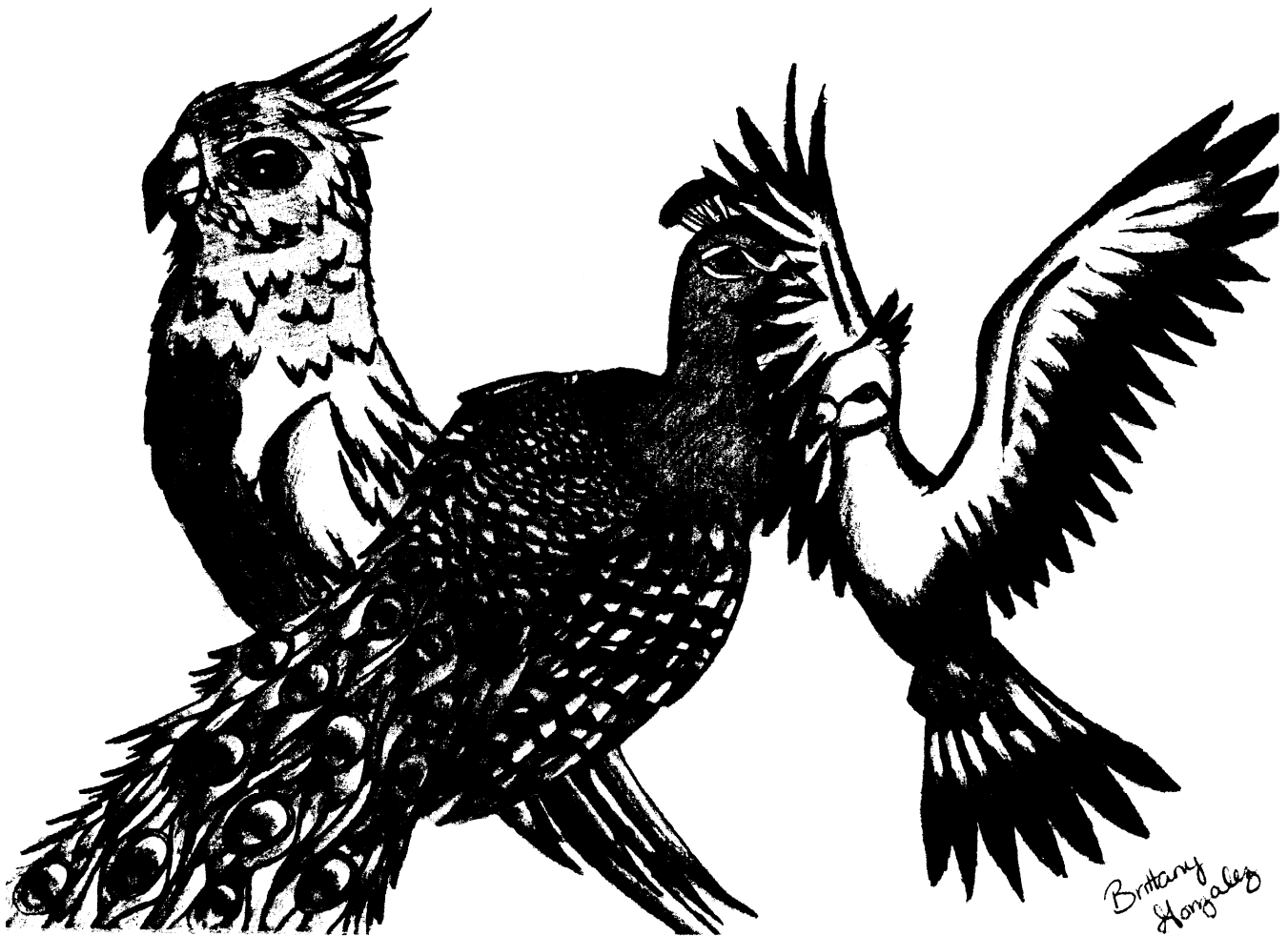

TEXAS REGISTER

Volume 33 Number 26

June 27, 2008

Pages 4937 - 5078



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

<http://www.sos.state.tx.us>
register@sos.state.tx.us

Secretary of State –
Phil Wilson

Director –
Dan Procter

Staff
Leti Benavides
Dana Blanton
Kris Hogan
Belinda Kirk
Roberta Knight
Jill S. Ledbetter
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IN THIS ISSUE

ATTORNEY GENERAL

Request for Opinions	4943
Opinions	4943

PROPOSED RULES

STATE OFFICE OF ADMINISTRATIVE HEARINGS

REQUESTS FOR RECORDS

1 TAC §161.1	4945
--------------------	------

TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

ADMINISTRATION

10 TAC §300.12	4945
----------------------	------

GENERAL PROVISIONS

10 TAC §301.2	4947
---------------------	------

REGISTRATION

10 TAC §303.140, §303.170	4947
---------------------------------	------

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

GENERAL POLICIES AND PROCEDURES

13 TAC §2.53	4949
13 TAC §2.58	4949

TALKING BOOK PROGRAM

13 TAC §§9.1 - 9.14	4950
---------------------------	------

TALKING BOOK PROGRAM

13 TAC §§9.1 - 9.18	4950
---------------------------	------

TEXAS DEPARTMENT OF LICENSING AND REGULATION

AUCTIONEERS

16 TAC §67.80	4955
---------------------	------

ELECTRICIANS

16 TAC §73.80	4956
---------------------	------

TEXAS RACING COMMISSION

RACETRACK LICENSES AND OPERATIONS

16 TAC §§309.1, 309.7, 309.9	4958
16 TAC §309.103	4959
16 TAC §§309.111, 309.113 - 309.118, 309.120, 309.123	4960
16 TAC §309.168	4962
16 TAC §§309.250, 309.253 - 309.255	4962
16 TAC §309.251, §309.252	4963
16 TAC §309.294, §309.296	4963
16 TAC §§309.305, 309.309, 309.311, 309.312, 309.314, 309.317	4963

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

RULES OF PRACTICE

22 TAC §75.19	4964
---------------------	------

TEXAS PARKS AND WILDLIFE DEPARTMENT

WILDLIFE

31 TAC §§65.310, 65.315, 65.318 - 65.321	4965
--	------

DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

ADMINISTRATIVE RULES AND PROCEDURES

40 TAC §101.811, §101.821	4968
40 TAC §§101.851, 101.853, 101.855, 101.857, 101.859, 101.861, 101.863, 101.865, 101.867, 101.869, 101.871, 101.873, 101.875, 101.877, 101.879, 101.881, 101.883	4969
40 TAC §§101.901, 101.903, 101.905, 101.907, 101.909, 101.911	4969
40 TAC §§101.7001, 101.7003, 101.7005, 101.7007, 101.7009, 101.7011, 101.7013, 101.7015, 101.7017, 101.7019, 101.7021, 101.7023, 101.7025, 101.7027, 101.7029, 101.7031, 101.7033, 101.7035, 101.7037, 101.7039, 101.7041, 101.7043, 101.7045, 101.7047, 101.7049	4969
40 TAC §§101.7051, 101.7053, 101.7055, 101.7057, 101.7059, 101.7061, 101.7063, 101.7065, 101.7067, 101.7069, 101.7071, 101.7073	4975
40 TAC §§101.8011, 101.8013, 101.8015	4977
40 TAC §§101.8051, 101.8053, 101.8055, 101.8057, 101.8059, 101.8061, 101.8063, 101.8065, 101.8067, 101.8069, 101.8071, 101.8073, 101.8075, 101.8077, 101.8079	4978

TEXAS WORKFORCE COMMISSION

CHOICES

40 TAC §§811.2 - 811.5	4988
40 TAC §§811.11, 811.14, 811.16	4991
40 TAC §§811.21, 811.26, 811.27, 811.29, 811.34	4992
40 TAC §§811.41, 811.43 - 811.46, 811.48 - 811.51	4994
40 TAC §811.47	4996
40 TAC §811.64	4996

WITHDRAWN RULES

DEPARTMENT OF STATE HEALTH SERVICES

PRODUCT SAFETY

25 TAC §§205.1 - 205.17	4997
25 TAC §205.10	4997

ADOPTED RULES

TEXAS ETHICS COMMISSION

REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

1 TAC §20.50	4999	34 TAC §1.72	5024
OFFICE OF RURAL COMMUNITY AFFAIRS		34 TAC §§1.330 - 1.332	5024
TEXAS COMMUNITY DEVELOPMENT PROGRAM		STATE EMPLOYEE CHARITABLE CAMPAIGN	
10 TAC §255.1	4999	ELIGIBILITY CRITERIA FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS	
TEXAS DEPARTMENT OF LICENSING AND REGULATION		34 TAC §329.5	5025
INDUSTRIALIZED HOUSING AND BUILDINGS		ELIGIBILITY CRITERIA FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS	
16 TAC §70.100, §70.101	5000	34 TAC §330.7	5025
BARBERS		REVIEW AND APPEAL PROCEDURES FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS	
16 TAC §82.72	5003	34 TAC §331.5	5026
TEXAS EDUCATION AGENCY		REVIEW AND APPEAL PROCEDURES FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS	
SCHOOL DISTRICTS		34 TAC §332.1, §332.5	5026
19 TAC §61.1037	5004	RULE REVIEW	
EDUCATIONAL PROGRAMS		Proposed Rule Review	
19 TAC §102.1053	5005	Texas Residential Construction Commission	5029
19 TAC §102.1101	5007	Adopted Rule Reviews	
TEXAS BOARD OF NURSING		Department of Assistive and Rehabilitative Services	5029
PRACTICE AND PROCEDURE		Texas Department of Licensing and Regulation	5030
22 TAC §§213.27 - 213.30, 213.33	5007	IN ADDITION	
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING		Office of the Attorney General	
STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT		Notice of Settlement	5033
22 TAC §663.11	5008	Notice of Settlement	5033
22 TAC §663.16	5008	Comptroller of Public Accounts	
22 TAC §663.17	5009	Notice of Contract Award	5033
22 TAC §663.19	5009	Notice of Request for Proposals	5034
DEPARTMENT OF STATE HEALTH SERVICES		Office of Consumer Credit Commissioner	
ZOONOSIS CONTROL		Notice of Rate Ceilings	5034
25 TAC §§169.41 - 169.48	5010	Credit Union Department	
OFFICE OF INJURED EMPLOYEE COUNSEL		Application for a Merger or Consolidation	5034
GENERAL ADMINISTRATION		Application to Amend Articles of Incorporation	5035
28 TAC §276.11	5011	Applications to Expand Field of Membership	5035
TEXAS PARKS AND WILDLIFE DEPARTMENT		Notice of Final Action Taken	5035
DESIGN AND CONSTRUCTION		East Texas Council of Governments	
31 TAC §61.132	5019	Request for Proposals for Information and Communication Technology Provider	5035
31 TAC §§61.132 - 61.136, 61.138, 61.139	5019		
COMPTROLLER OF PUBLIC ACCOUNTS			
CENTRAL ADMINISTRATION			
34 TAC §1.71	5024		

Employees Retirement System of Texas

Request for Qualifications - Corporate Governance Services5036

Texas Commission on Environmental Quality

Enforcement Orders5036

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions5041

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions5044

Notice of Radioactive Material License5045

Notice of Water Quality Applications.....5045

Department of State Health Services

Notice of Planned Changes in the Special Supplemental Nutrition Program for Women, Infants and Children5047

Texas Department of Housing and Community Affairs

Request for Proposals for Bond/Securities Disclosure Counsel....5047

Texas Department of Insurance, Division of Workers' Compensation

Correction of Error.....5047

Texas Lottery Commission

Instant Game Number 1051 "\$75,000 Casino"5048

Instant Game Number 1077 "Boot Scootin' Bucks"5052

Instant Game Number 1078 "Mucho Dinero"5056

Instant Game Number 1079 "3 of a Kind"5060

Instant Game Number 1080 "Super Match 3"5064

Instant Game Number 1087 "Winning Chips".....5068

North Central Texas Council of Governments

Request for Proposals to Conduct the Fort Worth Transportation Authority and Denton County Transportation Authority On-Board Transit Survey5072

Public Utility Commission of Texas

Notice of Application for Review of the Cost of Decommissioning Units 1 and 2 of the South Texas Project.....5073

Notice of Application for Sale, Transfer, or Merger5073

Notice of Application to Amend Certificated Service Area Boundaries in Hays County, Texas5073

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.2155073

Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.1715074

Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.1715074

Request for Proposals: Consulting Expert Services Concerning the Installation and Use of Combined Heating and Power Technology in Texas5074

School Land Board

Notice of Public Meeting Concerning Proposed Lease to Port Freeport.....5075

Texas State Technical College System

Invitation to Bid5075

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services5076

Notice of Implementation of Database Relating to Temporary Card-board Tags on Vehicles5076

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0718-GA

Requestor:

The Honorable John W. Segrest
McLennan County Criminal District Attorney
219 North 6th Street, Suite 200
Waco, Texas 76701

Re: Whether a program of house arrest and electronic monitoring of convicted individuals must be administered by a community supervision and correction department (RQ-0718-GA)

Briefs requested by July 14, 2008

RQ-0719-GA

Requestor:

David L. Lakey, M.D., Commissioner
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

Re: Whether federal law preempts the Department of State Health Services from regulating air ambulance EMS provider subscription programs (RQ-0719-GA)

Briefs requested by July 18, 2008

RQ-0720-GA

Requestor:

Ms. Katherine A. Thomas, MN, RN
Executive Director
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, Texas 78701

Re: Whether certain information about licensees of the Texas Board of Nursing is subject to disclosure under the Public Information Act, chapter 552, Government Code, or chapter 301, Occupations Code (RQ-0720-GA)

Briefs requested by July 18, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200803126
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 18, 2008



Opinions

Opinion No. GA-0634

The Honorable Kip Averitt
Chair, Committee on Natural Resources
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Valuation of real property surrounding Possum Kingdom Lake that the Brazos River Authority proposes to sell to the lessees of the property (RQ-0639-GA)

S U M M A R Y

The Brazos River Authority (the "Authority"), a special law conservation and reclamation district under Texas Constitution article XVI, section 59, owns real property surrounding Possum Kingdom Lake that is leased to private parties at below-market lease rates. The Authority is formulating procedures to offer to sell the property to the lessees of the property.

The first question presented is whether the leased property must be valued as unencumbered by the leases or encumbered by the unexpired terms of the existing leases for the purposes of determining the sales price if the property is offered for sale to the lessees. If the property is offered for sale to the lessees, the Authority would sell the property pursuant to Water Code section 49.226. Section 49.226(a) generally provides that surplus real or personal property owned by a water district may be sold in a private or public sale or be exchanged. Section 49.226(a) requires that the surplus property be exchanged for "like fair market value." The Authority and the lessees assume that this fair market provision applies to the sale of the Authority's property. The lessees contend that the fair market value provision in section 49.226 requires the Authority to value the property as encumbered by the leases. Because section 49.226(a) does not explicitly state that a lease may not

be considered, fair market value as used in the statute has the meaning established by the Texas courts, which meaning includes the value of a lease. Thus, application of the established judicial definition of fair market value requires the Authority to value the property as encumbered by the leases.

The second question presented is whether using the discounted sales price resulting from valuing the Authority's property as encumbered by the leases would violate Texas Constitution article III, section 52(a), which prohibits gratuitous transfers of public funds to individuals or private parties. Using a discounted sales price--resulting in this particular instance from valuing the property as encumbered by the existing leases--would not violate article III, section 52(a).

Opinion No. GA-0635

The Honorable Jeri Yenne
Brazoria County Criminal District Attorney
County Courthouse
111 East Locust, Suite 408A
Angleton, Texas 77515

Re: Wet/dry status of certain precincts within Brazoria County (RQ-0656-GA)

S U M M A R Y

Under the Alcoholic Beverage Code, the local option status of a voting unit can be changed only by an election held in that unit. Additionally, the local option status resulting from elections held in a justice precinct or a city contained in a county prevails against the status resulting from elections held in the larger county. Consistent with the statutory scheme for local option elections, the term "local option status" or "status" means the choice of alcoholic beverages expressly or implicitly prohibited or legalized as a result of the local option elections held in the smaller voting unit. That choice cannot be changed except through an election held in the same voting unit.

The 2007 county-wide election held in Brazoria County did not change the local option status of former Justice Precinct No. 5 ("Precinct 5"), the City of Sweeny ("Sweeny"), and the City of Richwood ("Richwood") resulting from their prior local option elections. Accordingly, wine and beer sales are unlawful in Sweeny, and beer sales remain prohibited in Precinct 5 as they were before the 2007 election. Thus, the county clerk cannot certify a location in Sweeny as being in a "wet area" for the sale of beer and wine on an application for a Wine and Beer Retailer's Off-Premise Permit. The sale of wine and beer and mixed beverages is unlawful in Precinct 5. Thus, the county clerk cannot certify locations in Precinct 5 as being in a "wet area" for the sale of beer and wine on applications for Wine and Beer Retailer's Off-Premise Permits or for the sale of mixed beverages on applications for Mixed Beverage Permits. The sale of mixed beverages is unlawful in Richwood, and the on-premises sale of beer remains prohibited therein as was the case before the 2007 election. Thus, the county clerk cannot certify a location in Richwood as being in a "wet area" for the sale of mixed beverages on an application for a Mixed Beverage Permit, and such a permit may not be issued for a location in Richwood.

Attorney General Opinion H-59 is modified to the extent it is inconsistent with the conclusions reached here.

Opinion No. GA-0636

The Honorable Jeb McNew
Montague County Attorney
Montague County Courthouse

Post Office Box 336

Montague, Texas 76251-0336

Re: Whether county officials who collect funds for the county may establish individual bank accounts in their own names (RQ-0657-GA)

S U M M A R Y

County officers who collect fees for the county must deposit the funds with the county treasurer or in the county treasury as required by Local Government Code chapter 113 or 133, absent a specific statute providing for a different disposition. A county sheriff, county clerk, district clerk, or justice of the peace may not deposit the county funds the officer collects in an individual bank account in the county's depository that enables the officer to control and withdraw funds.

The county auditor may "adopt and enforce regulations, not inconsistent with law" for collecting, checking, and accounting for the revenues and other funds and fees that belong to the county. Where county officers who collect county funds are required by statute to deposit them with the county treasurer or in the county treasury, the county auditor may not by regulation authorize a county officer to place those funds in an individual bank account in the county's depository under the officer's own name or enable the individual officer to control and disburse those funds.

If such bank accounts have been opened, the agreement with the bank should state who would be authorized to close the account. In all likelihood, this person would be the county officer who opened the account.

An official who collects fees under Local Government Code chapter 133 must deposit them in the county treasury. Checks written on accounts set up for fee funds collected by a county official and deposited in the county treasury are to be signed by the treasurer and the county auditor.

Opinion No. GA-0637

Mr. Robert Scott
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Whether impact fees may be imposed upon school district property under chapter 395 of the Local Government Code, and whether certain exactions constitute "impact fees" (RQ-0658-GA)

S U M M A R Y

Under section 395.022(b) of the Local Government Code, a school district is not required to pay an impact fee imposed under chapter 395 unless the district's board of trustees consents to the payment of such fee by entering into a contract with the political subdivision that imposes the fee. Attorney General Opinion GA-0496 (2006) has been modified by section 395.022(b) of the Local Government Code.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200803125
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 18, 2008



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 161. REQUESTS FOR RECORDS

1 TAC §161.1

The State Office of Administrative Hearings proposes amendments to §161.1 concerning charges for copies of public information. The proposed amendments change the current language of the section to be in conformity with the Public Information Act, Texas Government Code Chapter 552, and the applicable rules promulgated by the Office of the Attorney General, the state agency that guides the established charges applicable to requests for public information. The proposed amendment also corrects the citation reference to the Office of the Attorney General's rules concerning charges for public information.

Cathleen Parsley, General Counsel, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering it.

Cathleen Parsley, General Counsel, also has determined that for the first five-year period the amended rule is in effect the public benefit anticipated as a result of the rule will be to ensure that the public has correct and updated information about charges for copies of public information. There will be no additional effect on small businesses or individuals as a result of enforcing the rule because the amendments do not impose any charges or costs in addition to those that have long been in place for copies of public information.

Cathleen Parsley has further determined that the proposed amendment is a revision of an existing rule and does not impose new or additional requirements on small businesses in Texas. There is no new economic impact on small businesses in Texas.

Written comments must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Debra A. Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by email at debra.anderson@soah.state.tx.us, or by facsimile to (512) 463-1576.

The proposed amendments are proposed under Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The provisions to which the proposed amendments relate affect Government Code, Chapter 2001.

§161.1. *Charges for Copies of Public Information* [~~Records~~].

(a) The charge to any person requesting copies [photocopied reproductions] of any public information held by [readily available record of] the State Office of Administrative Hearings will be the charges established by the Office of the Attorney General, [Texas Building and Procurement Commission which are] codified at 1 TAC §§70.1 - 70.12 [~~1 TAC §§111.61-111.71~~] of this title (relating to Cost of Copies of Public Information).

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2008.

TRD-200803059

Cathleen Parsley

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 475-4931



TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.12

The Texas Residential Construction Commission (commission) proposes a new section in Title 10 Chapter 300 of the Texas Administrative Code, 10 Texas Administrative Code §300.12 (10 TAC §300.12) regarding the rulemaking process before the commission. The proposed new section is part of an overall plan to consolidate rules found in 10 Texas Administrative Code Chapters 300, 301, and 302 as a part of an agency rule review undertaken pursuant to Texas Government Code §2001.039. In this same issue of the *Texas Register*, a repeal of §301.2 is proposed to remove this language from Chapter 301 and further the agency's consolidation efforts.

Ms. Susan K. Durso, General Counsel for the commission, has determined that for each year of the first five year period that the new section is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the new section is in effect the public will benefit from having all rules related to agency administration consolidated into a single chap-

ter of the Texas Administrative Code. There will be no effect on individuals, large, small or micro businesses as a result of the new section because the rule currently exists in another administrative rule chapter.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Ms. Durso has also determined that for each year of the first five-year period the proposed new section is in effect there will be no new adverse economic effect on small businesses that interact with the commission because the rule currently exists in a different chapter of the Texas Administrative Code. Further, there is a statutory requirement that the commission adopt a rule on agency rulemaking procedures; therefore, no regulatory alternative is available. Accordingly, no regulatory flexibility analysis is necessary.

Comments (12 copies) on the proposed new section may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701; P.O. Box 13509, Austin, TX 78711-3509; or by fax to (512) 475-2453. Comments should include any comments on the agency rule review plan to consolidate agency administrative rules into a single chapter of the Texas Administrative Code and to determine whether this rule is still needed. In the alternative, comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "New section 300.12" in the subject line. The deadline for submission of comments is twenty (20) days from the date of publication of the proposal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration. Comments submitted electronically to a different email address or that do not have "New section 300.12" in the subject line may not be considered.

The new section is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Government Code §2001.021, requiring state agencies to prescribe by rule the form of a rulemaking petition, and Government Code §2001.039, requiring periodic agency review of rules.

No other statute, article or code is affected by the proposal.

§300.12. Rulemaking Process.

(a) Petition for Rulemaking by the Public. Any interested person may petition the commission to request adoption of a new rule or to amend or repeal an existing rule.

(1) The petition shall be in writing and shall include a brief explanation of the rule, the reason(s) the new or amended rule should be adopted or repealed, the statutory authority for such a rule or amendment and complete proposed text for the rule. All proposed text to amend a rule shall be indicated by striking through the words, if any, to be deleted from the current rule and by underlining the words, if any, to be added to the current rule.

(2) Upon receipt of a petition for rulemaking, the commission shall submit a notice for publication in the "In Addition" section of the *Texas Register*. The notice shall include a summary of the petition, the name of the individual, organization or entity that submitted the petition, and notification that a copy of the petition will be available for review and copying from the commission. Written comment on the petition shall be due 21 days from the date of publication of the

notice. Written comment may be submitted by electronic means as prescribed by the commission. Failure to publish a notice of a petition for rulemaking in the *Texas Register* shall not invalidate any commission action on the petition for rulemaking.

(3) Within 60 days after submission of a petition, the commission either shall deny the petition in writing, stating its reasons for the denial or shall initiate rulemaking proceedings.

(b) Commission-Initiated Rulemaking. The commission may initiate rulemaking proceedings at any time.

(c) Notice and Public Participation in Rulemaking Procedures.

(1) Initial Comments. Prior to publishing a proposed rule or initiating a major amendment to an existing rule, the commission may solicit public comment on the need for a rule and potential scope of the rule by publication of a notice of rulemaking project in the "In Addition" section of the *Texas Register*. A notice filed pursuant to this section shall contain a brief description and statement of the intended objective of the proposed rule and indicate if a draft of the proposed rule is available for review by interested persons. Unless otherwise prescribed by the commission, any comments concerning the rulemaking project shall be due within 30 days from the date of publication of the notice. The commission may hold workshops and/or public hearings on the rulemaking project.

(2) Notice. The commission may initiate a rulemaking project by publishing notice of the proposed rule in accordance with the Administrative Procedures Act (APA) §§2001.021 - 2001.037.

(3) Public Comment. Prior to the adoption of any rule, the commission shall afford all interested persons a reasonable opportunity to submit data, views or arguments in writing. Written comment along with 12 copies must be filed within 30 days of the date the proposed rule is published in the *Texas Register* unless the commission establishes a different date for submission of comments. Written comment may also be submitted by electronic means as prescribed by the commission.

(4) Public Hearing. The commission may schedule public hearings on a proposed rule pursuant to §2001.029 of the APA. The request for public hearing must be made no later than 21 days after the date the proposed rule is published in the *Texas Register*, unless the commission establishes a different date for requesting a public hearing.

(5) Final Adoption. Following consideration of comments, the commission will issue an order adopting, adopting as amended, or withdrawing the rule within six months after the date of publication of the proposed rule or the rule is automatically withdrawn.

(d) Emergency Adoption. Notwithstanding any other provision of these rules, if the commission finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The commission shall set forth the requisite finding in the preamble to the rule. An emergency rule adopted under the provisions of this subsection and the commission's written reasons for the adoption shall be filed in the office of the Secretary of State for publication in the *Texas Register*. All of the requirements of §2001.024 of the APA apply to this section.

(e) Informal Information Gathering.

(1) The commission or the commission staff may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons concerning a contemplated rulemaking.

(2) The commission may create committees of employees, non-employees or both to advise it with respect to any contemplated rulemaking or other issues of interest to the commission, builders, arbitrators, homeowners, third-party inspectors or other members of the public. Powers of these committees are advisory only.

(f) Saving Provisions. The amendment or repeal of a rule does not affect:

(1) the prior operation of the rule or any prior action taken under the rule;

(2) any right, privilege, obligation or liability previously acquired, accorded or incurred under the rule;

(3) any violation of the rule or any penalty or punishment incurred under the rule before its amendment or repeal; or

(4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty or punishment under the rule.

(g) Severability. If any part of a commission rule or a rule's application to any person or circumstance is held invalid, the invalidity does not affect other parts or applications of the commission rules that can be given effect without the invalid part or application, and to this end the commission rules are severable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200803093

Susan K. Durso

General Counsel

Texas Residential Construction Commission

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For further information, please call: (512) 463-2886



CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Residential Construction Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Residential Construction Commission (commission) proposes the repeal of 10 Texas Administrative Code §301.2 (10 TAC §301.2) regarding the rulemaking process before the commission. The proposed repeal is part of an overall plan to consolidate rules found in 10 Texas Administrative Code Chapters 300, 301, and 302 as a part of an agency rule review undertaken pursuant to Texas Government Code §2001.039. In this same issue of the *Texas Register*, a new section is proposed that will incorporate the current language of §301.2 without amendments. It is further proposed that the text of §301.2 shall be re-adopted as §300.12 in Title 10, Chapter 300 of the Texas Administrative Code.

Ms. Susan K. Durso, General Counsel for the commission, has determined that for each year of the first five year period that the repeal is in effect there will be no increase in expenditures

or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the repeal is in effect the public will benefit from having all rules related to agency administration consolidated into a single chapter of the Texas Administrative Code. There will be no effect on individuals, large, small or micro businesses as a result of the repeal because the rule is being moved to another administrative rule chapter.

Ms. Durso has also determined that for each year of the first five-year period the repeal is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments (12 copies) on the proposed repeal may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Comments should include any comments on the agency rule review plan to consolidate agency administrative rules into a single chapter of the Texas Administrative Code and to determine whether this rule is still needed. In the alternative, comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Rulemaking Process Repeal" in the subject line. The deadline for submission of comments is twenty (20) days from the date of publication of the proposed repeal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

The repeal is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Government Code §2001.021, requiring state agencies to prescribe by rule the form of a rulemaking petition, and Government Code §2001.039, requiring periodic agency review of rules.

No other statute, article or code is affected by the proposal.

§301.2. *Rulemaking Process.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Durso

General Counsel

Texas Residential Construction Commission

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CHAPTER 303. REGISTRATION

SUBCHAPTER B. REGISTRATION OF HOMES

10 TAC §303.140, §303.170

The Texas Residential Construction Commission (commission) proposes amendments to Title 10, Part 7, Chapter 303, Subchapter B, §303.140, relating to the registration of homes in the State of Texas, and §303.170, relating to administrative penalties for failure to register a home construction project in accordance with Title 16 of the Texas Property Code and commission rules. The amendments to §303.140 are proposed to clarify re-

cent amendments to the agency's policy regarding registration of homes online. The amendments to §303.170 are proposed to incorporate into the rules recent legislative amendments to the agency's statute and as part of a rule review under Government Code §2001.039.

Amendments to §303.140, relating to the home registration process, provides for online home registration which will streamline and unify home registration, reduce staff time spent on entering data, and reduce errors on data entered as a result of illegible handwriting. Builders and remodelers who have registered more than 25 home construction projects in the preceding calendar year are required to use the commission's secure Web portal to register projects online. The amendments also permit the Executive Director to grant waivers to this requirement, and will require use of the current registration form. Amendments to §303.140 were adopted in October of 2007; however, users of the rule found the language confusing. Therefore, the commission is proposing these revisions to clarify its intent.

Amendments to §303.170, relating to administrative penalties for failure to properly register homes, are proposed because the threshold dollar amount for interior renovations to existing homes that must be registered with the commission was lowered from \$20,000 to \$10,000 for home construction projects commenced on or after September 1, 2007, pursuant to House Bill 1038, enacted in the 80th, Regular Session, of the Texas Legislature. In addition, the amendments are part of a commission review of the necessity of these rules under the requirements of Government Code §2001.039, which requires each state agency to periodically review its rules.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect the public and builders will benefit from the immediate registration of all SIRP projects, and clarification on the process to register homes and the applicable late fees. In addition, the public will benefit from reduced costs for processing paper work and uniform procedures for home registration by builders and remodelers.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there will be no significant impact on individuals, large, small and micro-businesses because of the adoption of the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments (12 copies) on the proposed amendments may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th St., Austin, Texas, 78711-3509 or by fax to (512) 475-2453. In the alternative, comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Registration of Homes" in the subject line. Comments submitted electronically to another electronic address or that do not include "Registration of Homes" in the subject line may not be considered.

The deadline for submission of comments is twenty (20) days from the date of publication of the proposed sections in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed amendments. As part of the rule review, the public may include comments on whether the rule is still necessary.

The amendments are proposed pursuant to Chapter 426, Property Code, which provides for the registration of homes; generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; and Government Code §2001.039, which requires all state agencies to periodically review their adopted rules.

The statutory provisions affected by these proposed amendments are those set forth in Property Code, Chapters 408 and 426, and Government Code §2001.039.

No other statutes, articles, or codes are affected by the proposed amendments.

§303.140. Home Registration Process.

(a) A builder or remodeler registering a home under §303.100 or §303.110 of this subchapter shall submit a completed home registration form in effect at the time the home is registered with the appropriate fee to the commission as required under this section.

~~[(b)]~~ A completed home registration form must be submitted to the commission with the appropriate fee via the commission's secure Web portal provided for online home registrations by builders or remodelers, except as provided by subsection (d) of this section.

(b) ~~[(e)]~~ All builders and remodelers that are registered with the commission and that filed twenty-five or more home registration forms with the commission in the preceding calendar year must register homes online via the commission's secure Web portal provided for online home registration, unless the builder or remodeler has received a waiver of this requirement under subsection ~~(d)~~ ~~[(e)]~~ of this section.

(c) ~~[(d)]~~ Builders and remodelers that are unable to utilize the online home registration process as required by ~~subsection (e) of~~ this section may submit a sworn affidavit to the Executive Director requesting a waiver from the required use of the online process for home registration.

(d) ~~[(e)]~~ The Executive Director may grant a waiver requested under subsection ~~(c)~~ ~~[(d)]~~ of this section, if the builder or remodeler submits a sworn affidavit stating that the builder or remodeler:

- (1) does not have the use of a credit card or access to online banking for the purpose of making an online payment;
- (2) does not have access to the internet; or
- (3) other good cause for waiver as determined in the sole discretion of the Executive Director.

(e) ~~[(f)]~~ If a builder or remodeler is granted a waiver under this section, the home registration form must be submitted to the commission with the appropriate fee by first class mail, fax, or personal delivery.

(f) ~~[(g)]~~ The Executive Director's decision on whether to grant a waiver under this section is a final agency decision not subject to further administrative appeal.

(g) ~~[(h)]~~ The home registration form must state the legal name of the builder or remodeler, as registered with the commission, and the builder registration number assigned by the commission. If the

builder registration information on the home registration form does not match commission registration records, the form may be returned to the builder or remodeler without processing and all fees paid may be forfeited.

(h) [(i)] If the home registration form is incomplete, the builder or remodeler will be granted 15 days to complete the home registration form. If an appropriate response is not timely received, the home registration application will be denied and all fees paid forfeited.

(i) [(j)] If a home registration is denied, it is incumbent on the builder to register the home appropriately, including paying all late filing fees and civil penalties due. A denial under this subsection constitutes a violation of Property Code §418.001(9) and 10 TAC §303.5(j).

(j) [(k)] If a home registration is submitted more than 60 days past the deadline for filing the home registration, the commission will assess civil penalties in addition to the home registration filing and late filing fees.

§303.170. *Administrative Penalties.*

The commission may assess an administrative penalty and/or take other disciplinary action within its authority against a builder:

(1) that [who] fails to register a home with the commission pursuant to the requirements of this subchapter;

(2) that [who] fails to pay a late home registration penalty required under this subchapter;

(3) that [who] registers a home more than sixty (60) days after the expiration of the registration period required under this subchapter; or

(4) that [who] is found to have intentionally divided an agreement to improve the interior of an existing home into more than one agreement, each with consideration of less than \$10,000 [~~\$20,000~~], for the purpose of avoiding the requirements of this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Durso

General Counsel

Texas Residential Construction Commission

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.53

The Texas State Library and Archives Commission proposes to amend 13 TAC §2.53 regarding service complaints. This amend-

ment will specify the actions the agency will take when it receives a complaint. It will enable the agency to comply with a statutory provision as a result of the Sunset review process. It also deletes reference to a program and rule that have been repealed.

Edward Seidenberg, Assistant State Librarian, has determined that for the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Seidenberg also has determined that for each of the first five years the rule is in effect the public benefits anticipated as a result of the amended section will be to clarify the complaint process. There are no cost implications to either small businesses or persons required to comply with the revised rule.

Comments on the rule may be submitted in writing to Edward Seidenberg, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927.

The amended rule is proposed under Texas Government Code §441.018.

The proposed rule affects Government Code §441.018.

§2.53. *Service Complaints.*

(a) For the purpose of improving services to the public and resolving complaints about services of the Texas State Library, state publications of the library as defined in §3.1 of this title (relating to State Publications Depository Program) shall include a notice that complaints may be made to the director and librarian with the director's mailing address and telephone number. Such notice shall also be posted in all public service areas and public access computer systems.

(b) Complaints regarding service delivery, grants and the administration of grants will be processed promptly and efficiently in accordance with the procedures outlined in §2.55 of this title (relating to Protest Procedure). [~~Complaints regarding county librarians certified by the commission will be processed in accordance with procedures to be included in Chapter 5 of this title (relating to County Librarian Certification).~~]

(c) The commission will maintain a record of complaints filed. This will include information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(d) The commission will make information available describing its procedures for complaint investigation and resolution. The commission will periodically notify the complaint parties of the status of the complaint until final disposition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



13 TAC §2.58

The Texas State Library and Archives Commission proposes new 13 TAC §2.58 regarding use of technology. This rule will

specify the agency's policy regarding use appropriate technological solutions to improve the commission's ability to perform its functions. It will also enable the agency to comply with a statutory provision as a result of the Sunset review process.

Edward Seidenberg, Assistant State Librarian, has determined that for the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Seidenberg also has determined that for each of the first five years the rule is in effect the public benefits anticipated as a result of enforcing the new section will be to articulate the agency's policy regarding the use of technology. There are no cost implications to either small businesses or persons required to comply with the rule.

Comments on the rule may be submitted in writing to Edward Seidenberg, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927.

The new rule is proposed under Government Code §441.019.

The proposed rule affects Government Code §441.019.

§2.58. Use of Technology.

It is the policy of the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. To the extent practical and possible, the commission will ensure that the public is able to interact with the commission on the Internet.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



CHAPTER 9. TALKING BOOK PROGRAM SUBCHAPTER A. LIBRARY SERVICES FOR BLIND AND PHYSICALLY HANDICAPPED INDIVIDUALS

13 TAC §§9.1 - 9.14

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Library and Archives Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Library and Archives Commission proposes to repeal Chapter 9, Subchapter A, §§9.1 - 9.14, concerning library services for blind and physically handicapped individuals, in order to thereafter propose new rules for the same.

The current rules have not been significantly revised since their adoption in 1991. The current library services for blind and physically handicapped individuals are undergoing fundamental changes as the Talking Book Program moves from an analog technology to a digital one. Current rules do not cover some of these changes, while other rules need major revision to come into line with the changes to the library service.

Ava Smith, Director of the Talking Book Program, has determined that for the first five years the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repealed rules.

Ms. Smith also has determined that for each of the first five years the rule is repealed the public benefits anticipated as a result of enforcing the repealed sections will be to clarify the process of providing customer service. There are no cost implications to either small businesses or persons required to comply with the repealed rule.

Comments on the proposed repeal of Chapter 9, Subchapter A may be submitted in writing to Ava Smith, Director, Talking Book Program, Box 12927, Austin, Texas 78711-2927; may be faxed to (512) 936-0685; or may be submitted electronically to ava.smith@tsl.state.tx.us.

The repeals are proposed under the authority of Government Code §441.006 that provides the Texas State Library and Archives Commission with authority to govern the Texas State Library.

- §9.1. Definitions.
- §9.2. Administration.
- §9.3. Eligibility.
- §9.4. Status Changes.
- §9.5. Playback Equipment.
- §9.6. Books and Magazines.
- §9.7. Use of Mail Service.
- §9.8. Misuse of Service.
- §9.9. Notification of Potential Suspension.
- §9.10. Correction of Problem.
- §9.11. Suspension.
- §9.12. Reinstatement of Service.
- §9.13. Termination of Service.
- §9.14. Transfer of Service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



CHAPTER 9. TALKING BOOK PROGRAM 13 TAC §§9.1 - 9.18

The Texas State Library and Archives Commission proposes new rules for Chapter 9, concerning library services for blind and physically handicapped individuals, replacing current Chapter 9, Subchapter A rules which are in the process of being repealed.

The current rules have not been significantly revised since their adoption in 1991. The current library services for blind and physically handicapped individuals are undergoing fundamental changes as the Talking Book Program moves from analog technology to a digital one. Current rules do not cover some of these changes, while other rules need major revision to come into line with the changes to the library service.

Ava Smith, Division Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Smith has also determined that for each of the first five years the rules are in effect the public benefits anticipated as a result of enforcing the new sections will be to articulate the agency's policy regarding the policies and procedures for the use of this service. There are no cost implications to either small businesses or persons required to comply with the rules.

Written comments on the proposed new rules may be submitted in writing to Ava Smith, Director of the Talking Book Program, P.O. Box 12927, Austin, Texas 78711-2927; may be faxed to (512) 936-0685; or may be submitted electronically to ava.smith@tsl.state.tx.us.

The new rules are proposed under the authority of Government Code §441.006 that provides the Texas State Library and Archives Commission with authority to govern the Texas State Library.

§9.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Borrower--An eligible person who has registered with the commission and has borrowed or downloaded at least one book or magazine within the most recent 12-month period, or who is currently subscribing to a magazine distributed through the National Library Service for the Blind and Physically Handicapped.

(2) Veteran--Any person who has been honorably discharged or honorably released from the U.S. Armed Forces. Veteran designation in this instance does not include civilian employees or dependents of the military. Veteran designation in this instance does not include any veterans of military services other than of the United States. Veterans' spouses or dependents who are active borrowers are not eligible for veteran designation in this instance unless they themselves are veterans under this definition.

(3) Books--Braille, audiocassette, large print, and digital publications.

(4) Magazines--Periodical publications in cassette, Braille, large print, or digital format.

(5) Equipment--Any playback machine, accessories, and parts thereof which enable a borrower to listen to books and magazines.

(6) Digital materials and services--Equipment, books, and other services available by means of electronic computer files. These digital materials and services will be available to borrowers in one of three ways:

(A) Digital talking book machine (DTBM)--A hardware device produced by the National Library Service and assigned to the commission for loan to borrowers. These may also include commercially-produced machines purchased by the commission for the purpose of loan to borrowers by the commission.

(B) Digital talking book (DTB)--A book produced by digital recording processes and using flash memory embedded into a hard-plastic cartridge for ease of handling. These specially created books are for exclusive use on the DTBM mentioned in subparagraph (A) of this paragraph. These books are produced either by, or under the direction of, the National Library Service or the commission.

(C) Digital download service--A service provided or funded by either the National Library Service or the commission in which borrowers may download via the Internet audio and/or text computer files containing the contents of books and magazines.

(7) Loan period--The specific period of time that an item is loaned to a borrower. The loan period begins when Texas State Library staff assigns the book to the borrower and ends with the date the item is due back at the state library.

(8) Audit--Periodic inventory of equipment and/or books, as required by the National Library Service. Audits are conducted by the Texas State Library staff.

(9) Competent authority--In cases of blindness, visual disability, or physical limitation, includes doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by other persons whose competence is acceptable to the Library of Congress. In the case of reading disability from organic dysfunction, includes only doctors of medicine or osteopathy.

(10) Applicant agreement--A statement signed by each new applicant which states the user agrees to abide by the policies and procedures of the service. New applications will not be processed and service started for any applicant until the agreement is received. Older accounts will require this agreement whenever the user applies for new services. Accounts that are being reopened also will require a copy of this agreement.

(11) Account in good standing--A borrower's account must be kept in good condition in order to receive materials on loan. Minimal requirements for a borrower's account to be considered in good condition are:

(A) borrower is registered for service from the commission; and

(B) borrower continues to meet eligibility requirements as specified in §9.3 of this chapter (relating to Eligibility); and

(C) borrower does not have excessive overdue, lost, or damaged materials and/or machines; and

(D) borrower has not had account suspended for failure to follow procedures and policies as part of the membership agreement or for failure to cooperate with staff in the carrying out of said policies and procedures; and

(E) borrower has not had service suspended for misuse of the service, as specified in §9.11 of this chapter (relating to Misuse of Service).

(12) Commission--The Texas State Library and Archives Commission.

(13) National Library Service for the Blind and Physically Handicapped (National Library Service)--A division of the Library of Congress which operates a free national library service that produces recorded and Braille materials and distributes them to a cooperating network of regional and subregional libraries, to be circulated by postage-free mail to blind and physically disabled borrowers.

(14) Texas State Library--The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.

(15) U.S. Armed Forces--The Forces are comprised of the following: the U.S. Army, the U.S. Navy, the U.S. Marine Corps, the U.S. Air Force, the U.S. Coast Guard, and all armed auxiliary services of these branches.

§9.2. Administration.

A statewide program of library service for Texas residents who are blind, reading disabled, or physically handicapped is operated and administered by the Texas State Library, Talking Book Program for the Blind and Physically Handicapped. The National Library Service for the Blind and Physically Handicapped provides the Texas State Library with books in Braille, audiocassette, and digital formats under regulations established by the Library of Congress. The National Library Service also provides the Texas State Library with playback equipment for reading materials in audio format. Postage for mailing materials and equipment to and from users is paid by the U.S. Government under the special provisions for "free matter for the blind and other physically handicapped persons."

§9.3. Eligibility.

(a) The following persons are eligible for service:

(1) persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field is no greater than 20 degrees;

(2) persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing reading of standard printed material;

(3) persons certified by competent authority as unable to read or unable to use standard printed materials as a result of physical limitations;

(4) persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner;

(5) persons certified by competent authority as having an allergy or other chemically-based reaction of sufficient severity as to prevent their handling of printed materials in a normal manner.

(b) The following persons are not eligible for service:

(1) persons who are illiterate without having an eligible disability;

(2) persons who cannot read because of mental retardation;

(3) persons who are unable to read because they have a reading disability resulting from a non-organic dysfunction; and

(4) persons who cannot read because of conditions of non-organic dysfunction.

(c) All active users will remain eligible for service, provided they:

(1) continue to meet the requirements for eligibility in the program;

(2) are active borrowers; and

(3) maintain their accounts in "good standing."

§9.4. Application for Service.

(a) Each potential user of the service must submit an application for service. Users reactivating accounts after five years discontinuance must file a new application. The application may be either the specific application issued by the commission or the generic application issued by the National Library Service. Any application must include the following to be accepted and processed:

(1) Signature from a competent authority, as defined in §9.1(5) of this chapter (relating to Definitions). Because the signature must be an actual signature, as specified by the guidelines of the National Library Service, Texas State Library staff cannot accept applications that are photocopied, emailed, faxed, or have a stamped signature;

(2) Signed copy of the applicant agreement;

(3) Alternative contact person, and if applicable, any person authorized to access and make decisions on the user's account;

(4) In the case of an applicant claiming to be a veteran, documentation that confirms the person as an honorably discharged or honorably released veteran of the U.S. Armed Forces.

(b) Incomplete applications or applications that do not meet eligibility requirements will be returned to the applicants.

§9.5. Priority Service to Veterans.

(a) As required by the National Library Service, veterans using the service are to be given priority whenever they request services. Veteran borrowers are subject to the same requirements as other borrowers, namely they must meet eligibility requirements, must keep their accounts in good standing, must not misuse the service, etc.

(b) Veteran borrowers are required to provide documentation to confirm that they are honorably discharged or honorably released from the U.S. Armed Forces. Veteran designation will be removed from a user's account if Texas State Library staff determines that the designation was inappropriately placed on the account.

§9.6. Status of Users.

Registered borrowers of the Texas State Library, Talking Book Program for the Blind and Physically Handicapped should notify the library if any of the following circumstances occur affecting the borrowers' accounts:

(1) the borrower moves to a different address, acquires a different telephone number, or changes email address;

(2) the borrower desires to cancel service permanently or to place service on temporary hold for vacation, illness, or other reasons;

(3) the borrower moves temporarily or permanently to a location outside the state of Texas;

(4) the borrower desires to add a contact person or remove a contact person;

(5) the borrower wishes to designate a person to have access to the account and to act for the borrower;

(6) the borrower wishes to block a person from having access to the account or to request that that person no longer act for the borrower; and

(7) the borrower ceases to be eligible for service.

§9.7. Playback Equipment.

(a) Playback machines may be a cassette machine, a talking book machine, a combination machine, or a digital talking book machine. Equipment may be distributed by the National Library Service

to the commission for loan to borrowers, purchased by borrowers, or purchased by the commission for loan to borrowers. All loaned equipment is subject to be returned to the commission by borrowers when requested to do so. Damage or loss of equipment may cause a borrower's account to not be in good standing.

(1) Loan period. Playback equipment may be loaned to any active user who continues to meet eligibility requirements for service and who maintains an account in good standing. Equipment and accessories are loaned free of charge. An active user may keep playback equipment for as long as the user remains in the program and maintains "active" status.

(2) Replacement of equipment. An active user may request replacement of equipment if experiencing difficulty in using equipment or equipment does not operate properly. User may be required to return current equipment before replacement equipment is sent to user.

(3) Number of loaned equipment allowed. An active individual user may not have more than one of each type of playback equipment on loan at any given time. An active institutional user may have more than one of each type of playback equipment on loan at any given time if the institution serves a number of active individual users and machines are available for loan.

(4) Ownership of equipment and accessories. Playback equipment, amplifiers, headphones, and remote controls distributed by the Texas State Library or the National Library Service are the property of the federal government. Any equipment purchased by the commission for loan to active users is the property of the commission.

(5) Repair of playback equipment. Only the Texas State Library is authorized to make repairs to playback equipment on loan to Texas borrowers, or to make the determination that a machine is damaged beyond repair. A machine that needs repair must be returned to the Texas State Library, which will provide a replacement machine. Under no circumstances should a borrower or any other person attempt to repair the playback equipment or accessories.

(6) Repair of accessories. The National Library Service loans amplifiers and remote controls. An amplifier or remote control that needs repair must be returned to the National Library Service.

(7) Non-transferal of equipment. Borrowers must not lend, sell, or otherwise transfer playback equipment to other persons.

(8) Return of equipment. Playback equipment and accessories must be returned to the Texas State Library if the borrower ceases to actively use the service or no longer meets eligibility requirements for the service.

(9) Lost and damaged machines. A borrower is responsible for the good upkeep of any equipment loaned to that borrower. A borrower who repeatedly damages or loses equipment will not receive an automatic replacement, and a moratorium on future loans may be placed on the borrower's account. Borrowers may also face suspension of services in cases of flagrant abuse of equipment.

(10) Misuse of equipment. Borrowers who misuse equipment in a damaging or illegal manner will face suspension of service and may face a moratorium on future loans of equipment.

(11) Recall of equipment. Equipment may be recalled for the following reasons:

(A) periodic maintenance, either scheduled or unscheduled;

(B) as part of a recall issued by the National Library Service;

(C) for the purpose of repairing the machine;

(D) for non-cooperation on the part of the borrower with staff who are implementing and/or enforcing program policies and procedures;

(E) for a borrower's failure to adhere to the patron loan policy, the program's policies and procedures, and/or for abusive, destructive, or threatening behavior toward staff and property of National Library Service and of the commission;

(F) when a borrower no longer meets eligibility requirements for service, ceases to be an active user, or is deceased; and

(G) for any other reason or occasion, as determined by staff in accordance with policies and procedures of the program and/or guidelines provided by the National Library Service.

(b) If a borrower's machine is recalled, a replacement machine will be issued, dependent on the reason for the recall and the availability of a replacement machine. In the case of a general or wide-ranging recall, staff will notify borrowers affected by the recall in as reasonable a timeframe as possible. A borrower who does not cooperate with staff in the recall of equipment may have the loan of that equipment revoked for a period of time in accordance with the program's policies and procedures. A moratorium on future loans of equipment also may be placed on the borrower's account.

(c) Required audits of equipment. A borrower must cooperate with the commission in the auditing of any loaned equipment. Staff may conduct periodic, limited audits, in accordance with guidelines provided by the National Library Service, in which a set number of machines selected for audit must be located and reported as being in the assigned location. Staff may also conduct a regular audit of all equipment, in which all equipment must be located and accounted for. A borrower who does not cooperate with staff conducting an audit may have the loan of all equipment revoked and a moratorium on future loans of equipment placed on the account.

§9.8. Books and Magazines.

(a) Loan period. The loan period for books is 45 days for individuals, 90 days for schools, and 120 days for other institutions. The loan period for magazines is 15 days for individuals and 45 days for schools and other institutions. No fines for overdue books or magazines will be levied, although excessive overdues may result in suspension of service until overdue situation is resolved. A borrower with excessive overdues does not have an account in good standing.

(b) Ownership. Books and magazines in all formats are the property of the federal government, with the following exceptions:

(1) Books or magazines identified as "TSL" are the property of the Texas State Library; and

(2) Magazines distributed by the National Library Service are disposable unless clearly marked "Property of TSL."

(c) Non-transferal of materials. Borrowers must not lend, sell, or otherwise transfer library books or magazines to other persons.

(d) Return of books and magazines. Except for disposable materials, all books and magazines must be returned to the Texas State Library at the end of their loan period. If the borrower becomes ineligible or cancels service, all books and magazines must be returned to the Texas State Library regardless of whether the loan period has ended.

(e) Lost and damaged materials. Excessive numbers of lost and/or damaged books may result in suspension of service until the situation is resolved. Any borrower with an excessive number of lost

and/or damaged books and magazines does not have an account in good standing.

§9.9. Availability of Materials.

(a) All materials that are available for distribution to borrowers are distributed either by specific request of the borrower or through an automated selection process based on an array of variables chosen by the borrower. Texas State Library staff monitor borrowers' requests and attempt to keep items in stock which borrowers are likely to demand. Availability of items such as books and magazines are subject to the following circumstances:

- (1) popular demand for a particular item;
- (2) whether an item has been damaged and removed from the collection;
- (3) ability of staff to acquire and/or replace an item; or,
- (4) whether an item has been lost.

(b) From time to time, shortages of books, equipment, and other items for distribution to users may occur. In the event of a shortage that will be widespread or has the potential to be of some duration, Texas State Library staff will institute a special process of distribution to insure that items are made available to users in an efficient and equitable manner. The type of process used will be determined by the specific type of shortage and in consultation with staff of the National Library Service.

§9.10. Use of Mail Service.

Borrowers should return all materials through the United States Postal Service. No postage is required to return materials under current postal service regulations. All books, magazines, and equipment should be returned in its original packaging. When returning books, magazines, or equipment, the borrower must deliver the materials or equipment to the United States Postal Service by placing the items in a mailbox or taking them to a post office. Placing them on a doorstep for the mail carrier to pick up does not constitute delivery to the postal service and, if problems arise by use of this method, the borrower is responsible for the lost or damaged materials.

§9.11. Misuse of Service.

The following actions may result in suspension of borrowing privileges:

- (1) repeated requests for replacement of equipment that has been damaged through negligence, maliciousness, or unauthorized repair;
- (2) excessive numbers of overdue books or magazines;
- (3) repeated loss or damage of books or magazines;
- (4) abusive, obscene, harassing, or threatening behavior to Texas State Library staff and/or staff of the National Library Service;
- (5) repeated loan of books or playback equipment to other persons;
- (6) violations of the Patron Loan Policy and/or other policies described in this chapter;
- (7) refusal to cooperate with Texas State Library staff carrying out policies and procedures of the program;
- (8) not keeping borrower's account in "good standing."

§9.12. Notification of Potential Suspension.

If a borrower is misusing the service, the Texas State Library staff will contact the borrower and attempt to resolve the situation. In most cases,

a warning letter will be sent stating that suspension will be applied if the borrower does not cease the misuse of service.

§9.13. Correction of Problem.

If the borrower's response to potential suspension resolves the apparent problem or the borrower ceases the misuse of service by the designated date, and the borrower agrees to abide by Texas State Library policies in the future, no further action will take place at that time.

§9.14. Suspension of Service.

(a) Suspension of service may come about under one of three conditions:

(1) a borrower requests suspension of service because of illness, temporary relocation, or other personal reasons;

(2) service is automatically suspended when a borrower has not been active for a year;

(3) service is suspended by Texas State Library staff for cause. "For cause" may include the following:

(A) misuse of service, as defined in §9.11 of this chapter (relating to Misuse of Service);

(B) Texas State Library staff detect a problem with the account and need further information from the borrower;

(C) staff of the National Library Service request suspension of the account.

(b) In the event of suspension under subsection (a)(3)(B) and (C) of this section, Texas State Library staff will take the following actions:

(1) attempt to contact the borrower and resolve the situation so that service may be restored;

(2) determine an appropriate period of suspension, if situation warrants an extended suspension.

(c) Suspension for cause generally will not exceed six months. In some instances, a longer suspension may be imposed after consultation with staff of the National Library Service. In the case of minor problems with the account, such as outdated or incorrect contact information, suspension is in effect until the problem is corrected or resolved.

(d) Any suspension may be extended if the cause has not been resolved as of the end of the previous suspension.

(e) Suspension of service may be limited only to the portion of service being misused. For example, if the misuse relates to Braille books, then Braille service would be suspended, but circulation of other formats would continue. The scope of the suspension will be determined by the extent of the cause and at the discretion of the Texas State Library staff.

§9.15. Reinstatement of Service.

(a) If a borrower has voluntarily suspended service, then the borrower may contact the Texas State Library staff at any time to reinstate service. Service will be reinstated if the borrower still meets eligibility requirements and the account is otherwise in good standing.

(b) If service was automatically suspended because the borrower had not been an active user for a year, then the borrower may contact the Texas State Library staff at any time and request that service be reinstated. Service will be reinstated if the borrower still meets eligibility requirements and the account is otherwise in good standing.

(c) If a borrower has been suspended for cause, service may be reinstated when the cause has been resolved or the suspension has

expired, depending on the cause of suspension. In the case of a lengthy suspension, the patron will receive instructions, as part of the suspension notification, as to how to reinstate service. The borrower must continue to meet eligibility requirements and the account must otherwise be in good standing.

§9.16. Termination of Service.

(a) Service to eligible borrowers will not be permanently cancelled, although suspensions may be applied repeatedly. An account will be closed only under the following circumstances:

- (1) a borrower ceases to meet eligibility requirements;
- (2) a borrower requests that service be terminated; or,
- (3) a borrower ceases to be an active user.

(b) A borrower's application and account information will remain on file for five years after the account has been closed, and the account may be reactivated at any time within the five years. After five years, the application and account information will be disposed of in accordance with the applicable records retention schedule.

§9.17. Transfer of Service.

A borrower who has lived or will live outside the State of Texas for six months or longer will no longer be eligible to receive service through the Texas State Library, and must return all books and magazines to the Texas State Library. At the borrower's request, the Texas State Library will make arrangements to have service transferred to the new state of residence.

§9.18. Reactivation of Accounts.

(a) Any account that has been suspended may be reactivated. Any account closed within a five-year period may be reactivated. Reactivations occur under the following conditions:

- (1) User continues to meet eligibility requirements for service;
- (2) Account will be in good standing upon reactivation;
- (3) Signed applicant agreement has been received.

(b) An account that has been closed for more than five years cannot be reactivated; the user must file a new application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2008.

TRD-200803100

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 463-5459



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 67. AUCTIONEERS

16 TAC §67.80

The Texas Department of Licensing and Regulation (Department) proposes an amendment to an existing rule at 16 Texas Administrative Code, §67.80, regarding the auctioneers program.

The Department proposes to amend §67.80(i) to reduce the initial recovery fund fee from \$100 to \$50. The proposed amendment is necessary to avoid collecting fees for the recovery fund that are in excess of the amount needed.

Texas Occupations Code, Chapter 1802, Subchapter D, establishes the Auctioneer Education and Recovery Fund for the payment of claims against auctioneers licensed under Chapter 1802. The Department is responsible for administering the fund and for collecting from each applicant for licensure as an auctioneer or associate auctioneer a fee for the fund prior to issuing a license to the applicant. The amount of the fee is not set by statute. Subchapter D also provides that when the fund balance is less than \$300,000 on December 31 of any year, the Department shall collect from each licensee at renewal an additional fee equal to the greater of \$50 or the licensee's pro rata share of the amount required to return the fund balance to \$300,000. At present the fund balance is in excess of \$300,000 and will remain so even after funds are expended for education pursuant to §1802.156. The reduction of the initial recovery fund fee will not impair the ability of the fund to meet statutory requirements.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendment is in effect, there will be no direct cost to state or local government as a result of enforcing or administering the amendment. The cost of administering the fund does not change based on the amount of the fee that is charged.

Mr. Kuntz has determined that for the first five-year period the proposed amendment is in effect, there will be no reduction in revenue to the Department, since the monies paid to the recovery fund do not go into the general revenue fund and are not appropriated to the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be a continuation of the recovery fund at levels needed to protect members of the public who are harmed by the actions of licensees while at the same time reducing the burden on new licensees.

There will be no disparate economic effect on small or micro-businesses or to persons who are required to comply with the rule as proposed. The anticipated economic effect on small or micro-businesses or to persons who are required to comply with the rule as amended will be a lower recovery fund fee for licensees. There will be no additional costs to small or micro-businesses or to persons who may be required to comply with the section as proposed. Since the agency has determined that the rule will have no adverse economic effect on small businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin,

Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Chapters 51 and 1802, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1802. No other statutes, articles, or codes are affected by the proposal.

§67.80. Fees.

- (a) - (h) (No change.)
- (i) The initial recovery fund fee is \$50 [~~\$100~~].
- (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2008.

TRD-200803068

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 463-7348



CHAPTER 73. ELECTRICIANS

16 TAC §73.80

The Texas Department of Licensing and Regulation ("Department") proposes amendments to 16 Texas Administrative Code, Chapter 73, §73.80, regarding the electricians program.

The Department proposes to amend §73.80 to decrease the application and renewal fees for electrical sign contractors from \$125 to \$115 and to separate the subsection addressing both application fees and renewal fees into two distinct subsections in the rule.

The Department is required to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. Pursuant to the Department's annual fee review, the fees currently in place are above the amount required by the Department to cover costs. The proposed decrease would not adversely affect the administration and enforcement of the electricians program.

In addition to the fee decrease, §73.80(a), which includes both application and renewal fees for all licensees under this program, is being separated into two subsections. Proposed §73.80(a) will address application fees, and proposed §73.80(b) will address renewal fees. These proposed amendments will accommodate any future fee changes where the application fees and renewal fees are different.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there will be no direct cost to state or local government as a result of enforcing or administering these amendments.

Mr. Kuntz has determined that for the first five-year period the amendments to §73.80 are in effect, there will be a reduction in revenue to the Department; however, as noted above, the reduced revenues will not adversely affect the administration and enforcement of the electricians program.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be lower application and renewal fees for electrical sign contractors.

There will be no disparate economic effect on small or micro-businesses or to persons who are required to comply with the rule as proposed. The anticipated economic effect on small or micro-businesses or to persons who are required to comply with the rule as amended will be lower application and renewal fees for electrical sign contractors. There will be no additional costs to small or micro-businesses or to persons who may be required to comply with the section as proposed. Since the agency has determined that the rule will have no adverse economic effect on small businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 1305, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the proposal.

§73.80. Fees.

(a) Application [~~and renewal~~] fees:

- (1) Master Electrician--\$50
- (2) Master Sign Electrician--\$50
- (3) Journeyman Electrician--\$35
- (4) Journeyman Sign Electrician--\$35
- (5) Residential Wireman--\$25
- (6) Maintenance Electrician--\$25
- (7) Electrical Contractor--\$115
- (8) Electrical Sign Contractor--\$115 [~~\$125~~]
- (9) Electrical Apprentice--\$20
- (10) Electrical Sign Apprentice--\$20
- (11) Residential Appliance Installer--\$40
- (12) Residential Appliance Installation Contractor--\$125

(b) Renewal fees:

- (1) Master Electrician--\$50
- (2) Master Sign Electrician--\$50
- (3) Journeyman Electrician--\$35

- (4) Journeyman Sign Electrician--\$35
- (5) Residential Wireman--\$25
- (6) Maintenance Electrician--\$25
- (7) Electrical Contractor--\$115
- (8) Electrical Sign Contractor--\$115
- (9) Electrical Apprentice--\$20
- (10) Electrical Sign Apprentice--\$20
- (11) Residential Appliance Installer--\$40
- (12) Residential Appliance Installation Contractor--\$125

(c) [(b)] Late Renewal Fees. Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) [(e)] Revised or duplicate license fees:

- (1) All licenses except as set out below--\$25
- (2) Electrical Apprentice--\$20
- (3) Electrical Sign Apprentice--\$20

(e) [(d)] All fees are non-refundable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2008.

TRD-200803069

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 463-7348



PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

The Texas Racing Commission proposes amendments to 16 TAC §§309.1, 309.7, 309.9, 309.103, 309.111, 309.113 - 309.118, 309.120, 309.123, 309.250, 309.253, 309.254, 309.294, 309.296, 309.305, 309.309, 309.311, 309.312, and 309.314. The Commission also proposes the repeal of §309.251 and §309.252, and new §§309.168, 309.255 and 309.317. The amendments, repeal, and new sections are proposed in conjunction with the Commission's rule review of Chapter 309 pursuant to Texas Government Code §2001.039. Notice of this rule review was published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 289).

The sections proposed for amendment relate to: racetrack licenses, including their duration, the application fees, and the grounds for denying, suspending, or revoking a racetrack license; racetrack operations, including construction plans, design and maintenance, accessibility and restroom standards, mandatory refreshments, complaints, first aid, regulatory office space and equipment, parking, internal communications

system, and hazardous weather procedures; horse racetrack requirements, including the test barn, postmortem area, equine ambulance, starting crew, and the official program; and greyhound racetrack requirements, including the starting boxes, lockout kennel, kennel compound, and the turnout pens. The sections proposed for repeal relate to the isolation and treatment areas at a horse racetrack. The new sections proposed for adoption relate to the chase vehicle at a horse racetrack and to maintenance personnel at a greyhound racetrack.

Charla Ann King, Executive Director for the Commission, has determined that for the first five year period the proposal is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. King has also determined that the proposal will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposal.

Ms. King has also determined that for each year of the first five years the proposal is in effect the following statements regarding the anticipated public benefit will apply:

The change to §309.1 clarifies that the Commission may suspend or revoke a license, and that an association may surrender a license by agreement with the Commission.

The change to §309.7 will more directly correlate the application fee for a racetrack license to the actual costs of processing the application. While the change increases the initial processing charge for a racetrack license, it also provides that the Commission will only charge for the actual costs of processing the application. Any portion of the processing charge that exceeds the actual administrative costs will be reimbursed to the applicant, and any deficit will be billed to the applicant. The change also establishes the application fees for a greyhound racetrack license.

The change to §309.9 clarifies the grounds for denying, suspending or revoking a racetrack license by incorporating several grounds that exist in the Texas Racing Act but are not currently listed in the rule. These include: habitual alcohol abuse or the use of controlled substances; the improper use of a license, credential or identification card; a determination by the Commission that an applicant or licensee is unqualified to perform the duties of a licensee; or a determination by the Commission that an applicant or licensee is not of good moral character or that the person's reputation as a peaceable, law-abiding citizen is bad. The change also clarifies that it is a ground for denying, suspending or revoking a racetrack license that the person owns or would own more than a five percent interest in more than three Texas racetrack licenses, and that the prohibition under §6.06(h) of the Texas Racing Act attaches to each license regardless of whether the physical racetrack facilities for a particular license have been constructed.

The change to §309.103 increases the Commission's ability to oversee the construction of three new racetracks in the next 18 months by increasing, from 30 days to 60 days, the amount of advance opportunity that a racetrack must give the executive secretary to review its construction plans.

The change to §309.111 clarifies that association must provide for the comfort and safety of both patrons and licensees in the public areas of the grounds.

The change to §309.113 corrects an out-of-date reference in the rules. The state's accessibility standards for disabled persons have been codified in Chapter 469 of the Texas Government Code.

The change to §309.114 clarifies that the requirement to provide adequate restrooms on association grounds includes those areas that are within the restricted area of the enclosure.

The change to §309.115 clarifies that an association must provide adequate free drinking water to both patrons and licensees.

The change to §309.116 increases accountability and responsiveness to complaints by expanding the circumstances under which an association must notify the executive secretary of a complaint. The change requires an association to report complaints regarding: violations of ordinances or statutes; accidents or injuries; and unsafe or unsanitary conditions. The change also clarifies that an association's responsibility to respond to complaints is independent of the association's responsibility to notify the executive secretary of the complaint.

The change to §309.117 improves safety by defining the minimum qualifications for personnel staffing the first aid room, and by requiring a Class 1 or 2 racetrack to provide a properly certified MICU ambulance anytime it is conducting racing.

The change to §309.118 updates the physical, electrical and communications requirements for regulatory office space and equipment.

The change to §309.120 improves safety by requiring that the association's parking lot for licensees be lighted.

The change to §309.123 updates the requirements for an association's internal communications system.

Proposed new §309.168 improves safety by requiring associations to establish and implement approved procedures for protecting race participants, licensees, employees, and patrons during hazardous weather.

The change to §309.250 updates the physical and security requirements for the test barn.

The repeal of §309.251 removes the unnecessary requirement for an isolation area; current practice is that any horse with a communicable disease is relocated to a farm or facility off the track.

The repeal of §309.252 removes the unnecessary requirement for a treatment area; current practice is that any horse requiring emergency care is relocated to a properly equipped veterinary clinic.

The change to §309.253 removes the unnecessary requirement that the postmortem area have a locked storage area.

The change to §309.254 updates the equine ambulance requirements.

Proposed new §309.255 improves safety by defining the minimum standards for the chase vehicle.

The change to §309.294 improves safety for the starters by specifying that an association shall provide at least one assistant starter for each horse to start in a race.

The change to §309.296 improves wagering integrity by requiring horse racing associations to list in the official program the names of the lessee and lessor of a leased race animal and the

city and state of each horse's owner or designated representative.

The change to §309.305 deletes a requirement for maintenance personnel at a greyhound racetrack; the requirement for maintenance personnel is being separately addressed in proposed new §309.317.

The change to §309.309 provides additional flexibility to greyhound associations in enabling trainers to view the greyhounds in a lockout kennel.

The change to §309.311 removes the unused requirement that a greyhound association provide a separate kennel building for accommodating greyhounds and trainers participating in stakes races.

The change to §309.312 addresses the need for the sand in the turnout pen to be sanitary and sufficiently deep, while providing flexibility to the Commission and the associations in addressing each racetrack's differing schedules and specific needs.

The change to §309.314 improves safety for the greyhounds in the sprint paths by requiring the association to place a highly visible material at both ends of each path.

Proposed new §309.317 improves safety for the greyhounds by requiring an association to have a person present during racing and schooling who is qualified to maintain the starting boxes, racing surface, and track equipment.

All comments or questions regarding the proposal may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

SUBCHAPTER A. RACETRACK LICENSES

16 TAC §§309.1, 309.7, 309.9

The amendments are proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

The amendments implement Texas Civil Statutes, Article 179e.

§309.1. *Racetrack Licenses.*

(a) (No change.)

(b) Duration of License. A racetrack license is perpetual. The Commission may suspend or revoke a license in accordance with the Act and these rules. By agreement with the Commission, an association may voluntarily surrender a racetrack license for suspension or revocation.

(c) - (d) (No change.)

§309.7. *[Horse] Racetrack Application Fees.*

(a) (No change.)

(b) Application Fees.

(1) The application fee for a [horse] racetrack license is composed of a processing charge, a variable investigation charge, and a variable hearing charge. The processing charge is the amount needed by the Commission to cover the administrative costs of processing

the application ~~[set to cover administrative costs]~~. The investigation charge is the amount needed by the Commission to cover the costs incurred by the Department of Public Safety and Commission staff for conducting the background investigation on the applicant. The hearing charge is the amount needed by the Commission to pay for the State Office of Administrative Hearings, legal, and court reporting services for conducting a hearing on the application. An applicant for a ~~[horse]~~ racetrack license must pay all charges contemporaneously with filing the application. The failure to pay the total amount of the application fee may result in the application being summarily denied by the Commission or an administrative law judge. The Commission shall hold the application fee in the state treasury in a suspense account. The Commission may transfer the processing funds due to the Commission to the Texas Racing Commission Fund as costs are incurred. If the application is not certified as complete under §309.3(d) of this chapter, the Commission shall return the investigation charge and hearing charge, as well as any part of the processing charge that exceeds the actual administrative costs to the Commission of processing the application. [If the application is certified as complete, the Commission shall hold the investigation charge and hearing charge in the state treasury in a suspense account.] Not later than five business days after the date the Commission order on the application is final and unappealable, the Commission shall transfer the remaining suspense funds due to the Commission to the Texas Racing Commission Fund. If the actual costs to the Commission of processing the application, conducting the investigation or paying for the hearing exceed the amount deposited for the applicable charge, the applicant shall pay the remaining amount not later than 10 business days after receipt of a bill from the Commission. If the costs of processing the application, conducting the investigation or paying for the hearing are less than the amount of the charge, the Commission shall refund the excess not later than 10 days after the Commission order on the application is final and unappealable.

(2) The amount to be deposited for the processing charge for a horse racetrack license application is:

- (A) for a Class 1 racetrack, \$150,000 ~~[\$50,000]~~;
- (B) for a Class 2 racetrack, \$75,000 ~~[\$20,000]~~;
- (C) for a Class 3 racetrack, \$25,000 ~~[\$3,000]~~; and
- (D) for a Class 4 racetrack, \$10,000 ~~[\$1,500]~~.

(3) - (4) (No change.)

(5) The amount to be deposited for the processing charge for a greyhound racetrack license application is \$150,000.

(6) The amount to be deposited for the investigation charge for a greyhound racetrack license application is \$25,000.

(7) The amount to be deposited for the hearing charge for a greyhound racetrack license application is \$15,000.

§309.9. *Denial, Suspension and Revocation of Licenses.*

(a) (No change.)

(b) Grounds for Denying, Suspending, and Revoking Licenses.

(1) - (5) (No change.)

(6) Minimum Age, or Otherwise Ineligible. A license may be denied, suspended or revoked if it is determined that the licensee:

(A) has not attained the minimum age necessary to purchase alcoholic beverages in Texas; ~~[or]~~

(B) is in the habit of using alcoholic beverages to an excess or uses a controlled substance as defined in Chapter 481, Health

and Safety Code, or a dangerous drug as defined in Chapter 483, Health and Safety Code, or is mentally incapacitated;

(C) has improperly used a license certificate, credential, or identification card issued under this Act; or

(D) ~~[(B)]~~ through a change in ownership, would be ineligible to be issued a license.

(7) (No change.)

(8) Unqualified. A license may be denied, suspended or revoked if the Commission determines that the licensee is unqualified, by experience or otherwise, to perform the duties required of a licensee under the Act or the Rules.

(9) Moral Character and Reputation. A license may be denied, suspended or revoked if the Commission determines that the licensee is not of good moral character or the licensee's reputation as a peaceable, law-abiding citizen in the community where the licensee resides is bad.

(10) Ownership. A license may be denied, suspended or revoked if it results or would result in a person owning more than a five percent interest in more than three Texas racetrack licenses.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mark Fenner

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 1. GENERAL PROVISIONS

16 TAC §309.103

The amendment is proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

The amendment implements Texas Civil Statutes, Article 179e.

§309.103. *Construction and Renovation of Racetrack Facilities.*

(a) (No change.)

(b) Review of construction plan.

(1) At least 60 ~~[30]~~ days before the date an association proposes to start a racetrack construction project, the association shall submit a construction plan to the executive secretary. The construction plan must be in sufficient detail for the executive secretary to determine whether the proposed project complies with all applicable Commission rules.

(2) - (3) (No change.)

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §§309.111, 309.113 - 309.118, 309.120, 309.123

The amendments are proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

The amendments implement Texas Civil Statutes, Article 179e.

§309.111. *Comfort and Safety.*

(a) An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees.

(b) (No change.)

§309.113. *Accessibility by Disabled Persons.*

(a) An association shall ensure that all public areas of the association grounds are accessible by disabled persons in accordance with standards adopted for public buildings under Texas Government Code, Chapter 469 [Civil Statutes, Article 9402].

(b) (No change.)

§309.114. *Restrooms.*

An association shall provide and maintain restroom facilities which are adequate in number, design, construction, and location for all persons on association grounds, including licensees within the restricted non-public areas of the enclosure. Restroom facilities shall conform to the general standards as detailed in 25 TAC Chapter 265 (relating to General Sanitation).

§309.115. *Refreshments.*

An association shall provide an adequate supply of free drinking water [and other refreshments] for the patrons and licensees.

§309.116. *Complaints.*

(a) An association shall provide an office to handle complaints [regarding the association facilities or an alleged violation of the Act or the Rules].

(b) An association shall respond promptly to all complaints by patrons and licensees [regarding the association facilities].

(c) An association shall promptly notify the executive secretary of a complaint regarding:

- (1) an alleged violation of the Act or the Rules; [-]
- (2) an alleged violation of ordinances or statutes;

(3) accidents or injuries; or

(4) unsafe or unsanitary conditions for patrons, licensees or race animals.

(d) An association's responsibility to respond to complaints under subsection (b) of this section is independent of the association's responsibility to notify the executive secretary under subsection (c) of this section.

(e) ~~[(4)]~~ An association shall maintain a record of each complaint received and the action taken by the association regarding the complaint for two years.

§309.117. *First Aid.*

(a) At all times that an association is open to the public, the association shall provide a first aid room equipped with appropriately qualified personnel and equipment suitable to respond to medical emergencies of its patrons and licensees. Qualified personnel are those individuals certified in basic cardiac life support and first aid in conformance with accepted guidelines for emergency care and resuscitation.

(b) During a live race meeting, a horse racing association shall provide a properly equipped and staffed ambulance for humans and the services of a certified paramedic at any time that the racetrack is open for racing or exercising. At a Class 1 or 2 racetrack, the ~~primary~~ ambulance must be a Mobile Intensive Care Unit (MICU) certified by the Department of State Health Services ~~[Texas Department of Health]~~. If the MICU ambulance is used to transport an individual, the association may not conduct a race until the ambulance returns or is replaced by a properly equipped, staffed, and certified MICU ambulance. ~~[is replaced by an ambulance approved by the executive secretary.]~~ The ambulance must be parked at the entrance to the racing strip when not being used to transport an individual.

§309.118. *Regulatory Office Space and Equipment.*

(a) An association shall provide adequate office space for the use of the stewards or racing judges, occupational licensing personnel, the Commission's investigative unit, the pari-mutuel auditing staff and the staff employed by the comptroller, the Commission's veterinary and drug testing staff, and the Department of Public Safety. The location and size of the office space, furnishings, electrical outlets, telephone lines, television monitors, and equipment required under this section must be approved by the executive secretary.

(b) - (d) (No change.)

(e) The office space for occupational licensing personnel must consist of two rooms, one of which must be private. The room that is not private must be equipped with:

(1) - (2) (No change.)

(3) a television monitor; ~~[and]~~

(4) a private telephone line; [-]

(5) a private dedicated telephone line to be used by a fax machine;

(6) a private dedicated telephone line to be used by a credit card machine;

(7) the appropriate number of desks, file cabinets and chairs;

(8) locking file cabinets or other locking storage facilities adequate in size and number to store the licensing files and checks; and

(9) power outlets adequate in number and capacity to operate all of the Commission's electrical equipment located within the occupational licensing office.

(f) The office space for the pari-mutuel auditing staff and the staff employed by the comptroller must:

(1) provide an unrestricted view of the ~~[totalisator system operators and the]~~ pari-mutuel computers;

(2) - (5) (No change.)

(6) have at least six ~~[four]~~ power outlets to operate electrical equipment;

(7) include a private telephone line; ~~[and]~~

(8) if requested by the Commission or the comptroller, have an additional voice line to support dial-up capabilities for a personal computer; ~~and[-]~~

(9) a private dedicated telephone line to be used by a fax machine.

(g) Commission Veterinarian's Office.

(1) (No change.)

(2) The office must be adjacent to the drug testing area ~~[test barn]~~ and the pre-race holding area.

(3) The office must consist of at least two rooms, one of which must be private. ~~[The office must have a total floor area of at least 200 square feet.]~~

(4) At horse racetracks, the ~~[The]~~ office must be constructed to allow a view of each of the adjacent areas.

(5) The office must be equipped with:

(A) a sink with hot and cold water built into a counter of a size required by the executive secretary;

(B) desks and filing cabinets, in numbers as required by the executive secretary, equipped with locks; [a desk and two filing cabinets, both of which may be locked;]

(C) at horse racetracks, refrigerators and freezers, in sizes and numbers as required by the executive secretary, equipped with locks; [a refrigerator with at least 10 cubic feet of inside space and a freezer, in a size as required by the Commission, both equipped with locks; and]

(D) at greyhound racetracks, a freezer in a size as required by the executive secretary; [a storage area, which may be locked.]

(E) a storage area, of a size required by the executive secretary, with a door approved by the executive secretary;

(F) a private telephone line with a number of telephones required by the executive secretary;

(G) television monitors as required by the executive secretary; and

(H) at horse racetracks, a freestanding counter of a size required by the executive secretary.

(6) (No change.)

(h) (No change.)

(i) All private telephone lines provided under this section must: ~~[have listings separate from the association.]~~

(1) be assigned a unique telephone number that is directly accessible by the public without the need to go through an automated call answering system;

(2) be able to make both local and long distance calls without the need to enter an access code;

(3) if requested by the executive secretary, be listed in the governmental section of the local telephone directory; and

(4) if requested by the executive secretary, be listed on the association's website.

(j) An association shall provide at its expense computer lines, phone equipment, and any necessary voice and data network cabling [circuits, and network cabling] in the offices of the state regulatory and law enforcement personnel as prescribed by the executive secretary. In addition, the association shall reimburse the Commission for the costs of any network or data circuits installed or caused to be installed by the Commission at the association's location.

(k) All costs of telecommunications for regulatory and law enforcement personnel provided under this section shall be paid by the association and the telecommunications service may not be interrupted at any time. To ensure minimal disruption to the Commission's regulatory functions, the association shall ensure the Commission staff has twenty-four hour access and keys to any telecommunications rooms ~~[adequate access to the telecommunications equipment]~~ serving regulatory and law enforcement personnel as prescribed by the executive secretary.

(l) An association shall provide to the Commission a number of keys to the Commission offices as approved by the executive secretary.

(m) An association shall provide, inside the enclosure and in close proximity to the Commission's regulatory offices, adequate reserved parking for Commission staff.

§309.120. Parking for Licensees.

An association shall provide a lighted parking area for licensees outside the stable or kennel area.

§309.123. Internal Communication System.

(a) An association shall provide a telephone extension and/or a two-way radio to the following [an internal telephone communication system with outlets in]:

(1) - (13) (No change.)

(14) the location of the ambulances; [and]

(15) the outrider; [other locations designated by the executive secretary;]

(16) the chase truck;

(17) the claims clerk;

(18) the security office; and

(19) other locations designated by the executive secretary.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mark Fenner

General Counsel

Texas Racing Commission

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DIVISION 3. OPERATIONS

16 TAC §309.168

The new rule is proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

The new rule implements Texas Civil Statutes, Article 179e.

§309.168. Hazardous Weather.

(a) An association shall establish and implement procedures, approved by the executive secretary, to protect race animals, licensees, employees, and patrons from hazardous weather conditions.

(b) During live racing the stewards or judges, and during non-live racing the association, shall order all individuals on association grounds to take shelter when hazardous weather occurs. The order to take shelter shall take place:

(1) before lightning-producing thunderstorms have moved to within 6 miles of the facility; or

(2) whenever the facility is within the affected area of a severe thunderstorm or tornado warning as announced by the National Weather Service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mark Fenner

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SUBCHAPTER C. HORSE RACETRACKS

DIVISION 2. FACILITIES FOR HORSES

16 TAC §§309.250, 309.253 - 309.255

The amendments and new section are proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

The amendments and new section implement Texas Civil Statutes, Article 179e.

§309.250. Test Barn.

(a) - (b) (No change.)

(c) The barn must be clean, sanitary, adequately ventilated, and safe for the horses and the individuals who handle the horses.

(d) The barn must be equipped with:

(1) a walk ring large enough to accommodate eight horses;

(2) - (3) (No change.)

(4) eight disinfected water buckets for drinking water.

(e) (No change.)

(f) The area must have only one entrance, which must be [that is] locked or guarded at all times. The area must have a security guard present on live race days prior to the first race and remaining until all race horses have been released. The guard shall:

(1) restrict access to the test barn to Commission personnel, test technicians, veterinarians, authorized licensees escorting race horses for testing, and Commission-escorted guests; and

(2) maintain an accurate log of all horses and licensees entering and leaving the test barn on a form approved by the executive secretary.

§309.253. Postmortem.

(a) - (b) (No change.)

(c) The area must be equipped with:

(1) - (2) (No change.)

(3) adequate drainage; and

(4) hot and cold water and a hose. [; and]

~~[(5) a locked storage area.]~~

(d) (No change.)

§309.254. Equine Ambulance.

(a) - (c) (No change.)

(d) The ambulance must be equipped with:

(1) (No change.)

(2) ramps or a system to lower the ambulance to ground level to load a horse;

(3) - (10) (No change.)

(e) (No change.)

§309.255. Chase Vehicle.

(a) An association shall provide a chase vehicle and driver for the commission veterinarian's use during each live performance.

(b) In addition to the driver, the association shall have at least one assistant starter accompany the commission veterinarian during each race.

(c) The chase vehicle must be able to navigate on the racetrack during all weather conditions.

(d) The chase vehicle must be large enough to provide:

(1) interior seating for at least four people; and

(2) room to store the portable screens used to shield a horse from public view.

(e) The chase vehicle shall be equipped with a five-gallon water container, a sponge, and a scraper.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mark Fenner
General Counsel
Texas Racing Commission
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16 TAC §309.251, §309.252

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Racing Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

The repeals implement Texas Civil Statutes, Article 179e.

§309.251. *Isolation Area.*

§309.252. *Treatment Area.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mark Fenner

General Counsel

Texas Racing Commission

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DIVISION 4. OPERATIONS

16 TAC §309.294, §309.296

The amendments are proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

The amendments implement Texas Civil Statutes, Article 179e.

§309.294. *Starting Crew.*

An association shall provide a starting crew for each race to assist in handling the horses in the starting gates. The association shall provide one assistant starter for each horse to start in a race. [a sufficient number of assistant starters for the number of horses to start in a race.]

§309.296. *Official Program.*

(a) For each race day, an association shall prepare an official program. The official program must contain the order of the races on that day and:

(1) (No change.)

(2) for each horse listed in the program:

(A) - (D) (No change.)

(E) if the horse is eligible for participation in the Texas Bred Incentive Program, the name or logo of the appropriate official breed registry; [-]

(F) if the horse is a leased animal, the names of the lessee and lessor must appear on the program; and

(G) the city and state of the owner or the designated representative.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. GREYHOUND RACETRACKS

DIVISION 1. FACILITIES AND EQUIPMENT

16 TAC §§309.305, 309.309, 309.311, 309.312, 309.314, 309.317

The amendments and new section are proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

The amendments and new section implement Texas Civil Statutes, Article 179e.

§309.305. *Starting Boxes.*

(a) (No change.)

(b) The association shall periodically inspect each starting box to ensure its safe and effective operation. [When the track is being used for racing or schooling, the association shall have at least one person present on association grounds who is skilled and qualified to maintain the starting boxes.]

(c) (No change.)

§309.309. *Lockout Kennel.*

(a) An association shall provide a lockout kennel that:

(1) (No change.)

(2) is air-conditioned sufficiently to maintain a temperature between 68 and 75 degrees Fahrenheit; and

(3) has sealed or ceramic floors and walls to permit proper cleaning and disinfection; [- and]

[(4) has a one-way viewing window to allow the trainers to view the interior of the lockout kennel.]

(b) (No change.)

(c) An association shall provide a comfortable room near ~~adjacent to~~ the lockout kennel in which a kennel owner or trainer may view the race. The association shall also provide kennel owners and trainers a method for monitoring the interior of the lockout kennel as approved by the executive secretary. ~~[and view the interior of the lockout kennel.]~~

(d) (No change.)

§309.311. Kennel Compound.

(a) An association shall provide in the kennel compound area ~~[:]~~

~~[(1)]~~ not more than 18 separate kennel buildings for the kennel owners under contract with the association. ~~[: and]~~

~~[(2)]~~ a separate kennel building for greyhounds that will be participating in stake races, designed to accommodate several trainers and their greyhounds.]

(b) - (d) (No change.)

§309.312. Turnout Pens.

Each kennel building must have at least three turnout pens. Each pen must:

(1) - (8) (No change.)

(9) have sand or a comparable material of a depth approved by the executive secretary that is maintained in a sanitary state. ~~[a minimum of 12 inches of sand or a comparable material that is replaced at least every 3 months.]~~

§309.314. Sprint Path.

An association shall provide, for every five ~~[three]~~ kennel buildings, a sprint path located adjacent to the kennel compound area. The sprint path must:

(1) - (4) (No change.)

(5) have a base and surface comparable to the racetrack surface; ~~[and]~~

(6) have a highly visible material at both ends; and

(7) ~~[(6)]~~ be maintained by the association at all times.

§309.317. Facilities and Equipment Maintenance Personnel.

When the track is being used for racing or schooling, the association shall have at least one person present on association grounds who is skilled and qualified to maintain the starting boxes, the racing surface, and all track equipment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mark Fenner

General Counsel

Texas Racing Commission

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.19

The Texas Board of Chiropractic Examiners (Board) proposes as a new rule §75.19, relating to cease and desist orders. This new rule delegates to the Board's Enforcement Committee the authority to issue a cease and desist order and describes the procedures for doing so as authorized by Texas Occupations Code §201.6015, relating to cease and desist order.

Glenn Parker, Executive Director, has determined that for the first five-year period this new rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering this new rule.

Mr. Parker has also determined that for each year of the first five-year period this new rule is in effect the public benefit will be the Board's ability to more promptly respond to an instance where a person is practicing chiropractic without a license. Mr. Parker has determined that because this rule relates to the Board's internal procedures there will be no costs associated with this new rule and no costs or adverse economic effects to small or micro businesses. Because there is no adverse economic effect, an economic impact statement and regulatory flexibility analysis is not required for this new rule.

Comments on this proposed new rule may be submitted to Ms. Mary Feys, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701 or via e-mail to mary.feys@tbce.state.tx.us or via facsimile to (512) 305-6705 no later than 30 days from the date that this proposed new rule is published in the *Texas Register*.

This new rule is proposed under Texas Occupations Code §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic, §201.506, relating to the Enforcement Committee, which authorizes the Board to direct the enforcement duties of the committee, and §201.6015, relating to cease and desist order, which authorizes the Board to issue such orders.

§75.19. Cease and Desist Orders.

The Board of Chiropractic Examiners delegates to its Enforcement Committee the authority to determine whether it appears that a person is engaging in an act or practice that constitutes the practice of chiropractic without a license or registration under the Chiropractic Act. After notice and opportunity for an informal hearing, the Enforcement Committee may issue a cease and desist order in the name of the board prohibiting the person from engaging in that activity. The Enforcement Committee may take all actions necessary and proper to carry out the board's authority under Texas Occupations Code §201.6015, relating to cease and desist order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200803073

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6901



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.310, 65.315, 65.318 - 65.321

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.310, 65.315, and 65.318 - 65.321, concerning the Migratory Game Bird Proclamation.

The proposed amendment to §65.310, concerning Means and Methods, would clarify that lead shot is lawful for the take of migratory game birds other than waterfowl. Federal law mandates the use of specific types of non-toxic shot for the take of waterfowl. The current rules define "non-toxic shot" as any shot approved by the director of the U.S. Fish and Wildlife Service (Service). Since federal rules allow the use of lead shot for species other than waterfowl, it is therefore regarded as "non-toxic" in that context. The proposed amendment would state this explicitly, rather than leave it to deduction. The proposed amendment is necessary to eliminate potential confusion for hunters.

The proposed amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, would adjust the season dates for early-season species of migratory game birds to account for calendar-shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The proposed amendment to the portion of §65.315 concerning doves would implement a slightly different season segment structure from years past. The department has been contacted numerous times by hunters and landowners about the possibility of changing the boundaries of the South Dove Zone in order to allow for later hunting. Boundary changes must be approved by the Service, a process that typically takes from three to five years. However, the department does have the authority to adjust the lengths of the fall and winter segments within the current federal frameworks to provide additional hunting opportunity later in the season. Last year, the fall segment ran for 52 days; the proposed amendment would remove nine days from the end of the segment and transfer them to the end of the winter segment.

The proposed amendment to §65.315 also would implement a 16-day statewide teal season to run September 13 - 28, 2008, which must be approved by the Service before it can be implemented. If the Service does not approve a 16-day season, the department proposes to adopt a 9-day season to run September 20 - 28, 2008. The department cautions that the federal frameworks could close the season on teal if population data warrant. By federal law, the number of days in the September teal season count against the 107 days of total hunting opportunity allowed for ducks, coots, and mergansers. In 2007, the Service authorized a 16-day September teal season, but in the High Plains Mallard Management Unit (HPMMU) the department chose to implement only a nine-day teal season, shifting the seven remaining days to the general duck season. The department's reasoning was that the September teal-only season doesn't offer an

opportunity to take other species of ducks, whereas the general season offers hunting opportunity for at least seven species in addition to teal. Therefore, by shifting seven days from the teal season to the beginning of the general duck season, the intent of the department was to provide more diverse hunting opportunity in the HPMMU.

This year, however, the department is concerned that retaining the current season structure could result in the net loss of hunting opportunity if the Service does not authorize the "liberal" management package for ducks. Under the "liberal" management package, the HPMMU receives 97 days of opportunity, plus two days for the youth-only waterfowl season, yielding a total of 99 days of opportunity. Thus, if the Service authorizes 16 days of teal hunting opportunity, the department will only be able to allow an eight-day teal season in the HPMMU, since the 107-day total season length cannot be exceeded. The department would like to gauge public sentiment for a 16-day teal season in the HPMMU.

The proposed amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, adjusts the season dates for late-season species of migratory game birds to account for calendar-shift.

The proposed amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift.

The proposed amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates for the take of late-season species of migratory game birds by means of falconry, also to reflect calendar shift.

The proposed amendment to §65.321, concerning Special Management Provisions, would adjust the dates for the conservation season on light geese to account for both calendar shift and the adjustment of season dates in the West Goose Zone resulting from changes in the crane season in Zones A and B.

The proposed amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service. The Service has not issued regulatory frameworks for the 2008-2009 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative and may change significantly, depending on federal actions over the summer. However, it is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the frameworks in order to provide maximum hunter opportunity.

Robert Macdonald, Regulations Coordinator, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the amendments as proposed.

Mr. Macdonald also has determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds, as well as the implementation of commission policy to maximize recreational opportunity for the citizens of the state.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed amendments regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game bird resources in this state and therefore do not directly affect small businesses or micro-businesses. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the amendments as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the amendments as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to Vernon Bevill, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4578 or 1-800-792-1112 (e-mail: vernon.bevill@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.310. Means and Methods.

Migratory birds may be taken by any method except those prohibited in this section. Except as provided in this subchapter, no person shall take migratory game birds:

(1) - (10) (No change.)

(11) while possessing loose shot that is not non-toxic shot or shotshells containing any shot other than non-toxic shot. The provisions of this paragraph apply only to the hunting of waterfowl.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 13 - 28, 2008 and November 1 - December 24, 2008 [September 15 - 30, 2007 and November 3 - December 26, 2007].

(2) (No change.)

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2008 [September 1 - October 30, 2007].

(B) - (C) (No change.)

(2) Central Zone.

(A) Dates: September 1 - October 30, 2008 and December 26, 2008 - January 4, 2009 [September 1 - October 30, 2007 and December 26, 2007 - January 4, 2008].

(B) - (C) (No change.)

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 20 - November 2, 2008 and December 26, 2008 - January 20, 2009 [September 21 - November 11, 2007 and December 26, 2007 - January 12, 2008].

(B) - (C) (No change.)

(4) Special white-winged dove area.

(A) Dates: September 6, 7, 13, and 14, 2008 [September 1, 2, 8, and 9, 2007].

(i) - (ii) (No change.)

(B) Dates: September 20 - November 2, 2008 and December 26, 2008 - January 16, 2009 [September 21 - November 11, 2007 and December 26, 2007 - January 8, 2008].

(i) - (ii) (No change.)

(c) Gallinules.

(1) Dates: September 13 - 28, 2008 and November 1 - December 24, 2008 [September 15 - 30, 2007 and November 3 - December 26, 2007].

(2) (No change.)

(d) September teal-only season.

(1) Dates: September 13 - 28, 2008.

[(A) High Plains Mallard Management Unit: September 15 - 23, 2007.]

[(B) Remainder of the state: September 15 - 30, 2007.]

(2) (No change.)

(e) - (f) (No change.)

(g) Woodcock: December 18, 2008 - January 31, 2009 [December 18, 2007 - January 31, 2008]. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): November 1, 2008 - February 15, 2009 [November 3, 2007 - February 17, 2008]. The daily bag limit is eight. The possession limit is 16.

§65.318. Open Seasons and Bag and Possession Limits--Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is five, which may include no more than two scaup, two redheads, two wood ducks, and no more than one (in the aggregate) of the following: mallard hen, pintail, canvasback, or dusky duck (mot-

tled duck, black duck, Mexican duck, or hybrid of those species). The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit: October 25 - 26, 2008 and October 31, 2008 - January 25, 2009 [~~October 20 - 21, 2007 and October 26, 2007 - January 27, 2008~~].

(B) North Zone: November 1 - 30, 2008 and December 13, 2008 - January 25, 2009 [~~November 3 - 25, 2007 and December 8, 2007 - January 27, 2008~~].

(C) South Zone: November 1 - 30, 2008 and December 13, 2008 - January 25, 2009 [~~November 3 - 25, 2007 and December 8, 2007 - January 27, 2008~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: November 1, 2008 - February 8, 2009 [~~November 3, 2007 - February 5, 2008~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 1, 2008 - February 3, 2009 [~~November 3, 2007 - February 5, 2008~~]. The daily bag limit for dark geese is five, which may not include more than four Canada geese or more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 1, 2008 - January 25, 2009 [~~November 3, 2007 - January 27, 2008~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) white-fronted geese: November 1, 2008 - January 11, 2009 [~~November 3, 2007 - January 13, 2008~~]. The daily bag limit for white-fronted geese is two.

(II) Canada geese: November 1, 2008 - January 25, 2009 [~~November 3, 2007 - January 27, 2008~~]. The daily bag limit for Canada geese is three.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 8, 2008 - February 8, 2009 [~~November 3, 2007 - February 3, 2008~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 28, 2008 - February 8, 2009 [~~November 23, 2007 - February 3, 2008~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 20, 2008 - January 25, 2009 [~~December 22, 2007 - January 27, 2008~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 18 - 19, 2008 [~~October 13 - 14, 2007~~];

(B) North Zone: October 25 - 26, 2008 [~~October 27 - 28, 2007~~]; and

(C) South Zone: October 25 - 26, 2008 [~~October 27 - 28, 2007~~].

§65.319. *Extended Falconry Season--Early Season Species.*

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves and white-winged doves: November 19 - December 25, 2008 [~~November 19 - December 25, 2007~~].

(2) rails and gallinules: December 26, 2008 - January 31, 2009 [~~December 27, 2007 - February 1, 2008~~].

(3) woodcock: November 24 - December 17, 2008 [~~November 24 - December 17, 2007~~].

(b) (No change.)

§65.320. *Extended Falconry Season--Late Season Species.*

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) (No change.)

(B) North Duck Zone: January 26 - February 9, 2009 [~~January 28 - February 11, 2008~~];

(C) South Duck Zone: January 26 - February 9, 2009 [~~January 28 - February 11, 2008~~].

(2) (No change.)

§65.321. *Special Management Provisions.*

The provisions of paragraphs (1) - (3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) - (3) (No change.)

(4) Special Light Goose Conservation Period.

(A) From January 26 - March 29, 2009 [~~January 28 - March 30, 2008~~], the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 9 - March 29, 2009 [~~February 6 - March 30, 2008~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2008.

TRD-200803031

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), proposes to amend the DARS rules in Title 40, Part 2, Chapter 101, Subchapter E, Appeals and Hearing Procedures for Vocational Rehabilitation and Independent Living Programs, by repealing the subchapter and replacing with new Subchapter J, Appeals and Hearing Procedures. The following divisions and sections in Title 40, Chapter 101, Subchapter E, are to be repealed: Chapter 101, Subchapter E, Division 1, §§101.811 and §101.821; Division 2, §§101.851, 101.853, 101.855, 101.857, 101.859, 101.861, 101.863, 101.865, 101.867, 101.869, 101.871, 101.873, 101.875, 101.877, 101.879, 101.881, and 101.883 and Division 3, §§101.901, 101.903, 101.905, 101.907, 101.909, and 101.911. The following new rules are proposed: Division 1, General Rules, §§101.7001, 101.7003, 101.7005, 101.7007, 101.7009, 101.7011, 101.7013, 101.7015, 101.7017, 101.7019, 101.7021, 101.7023, 101.7025, 101.7027, 101.7029, 101.7031, 101.7033, 101.7035, 101.7037, 101.7039, 101.7041, 101.7043, 101.7045, 101.7047 and 101.7049; Division 2, Division for Blind Services and Division for Rehabilitation Services, §§101.7051, 101.7053, 101.7055, 101.7057, 101.7059, 101.7061, 101.7063, 101.7065, 101.7067, 101.7069, 101.7071 and 101.7073; Division 3, Division for Early Childhood Intervention Services, §§101.8011, 101.8013 and 101.8015; and Division 4, Office for Deaf and Hard of Hearing Services, §§101.8051, 101.8053, 101.8055, 101.8057, 101.8059, 101.8061, 101.8063, 101.8065, 101.8067, 101.8069, 101.8071, 101.8073, 101.8075, 101.8077, and 101.8079.

In conjunction with this proposal, DARS proposed amendments to Chapter 101, Subchapters A, B, C, D, F and I in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4825).

The proposal consolidates all DARS administrative hearing rules under Chapter 101, new Subchapter J, in compliance with HB 2292, 78th Legislature, Regular Session. New Subchapter J, Appeals and Hearing Procedures, is extensively restructured and expanded from three divisions to four divisions in order to add appeals and hearing procedures specific to the Division for Early Childhood Intervention Services and the Office for Deaf and Hard of Hearing Services.

In accordance with the requirements of Texas Government Code §2001.039, DARS has conducted a four-year review of Title 40, Chapter 101, Subchapter E, of the DARS rules. Notice of the proposed rule review of Title 40, Part 2, Chapter 101, including Subchapter E, was published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8863). DARS determined that the reasons for initially adopting these rules continue to exist. However, the rule review identified the need to repeal and replace Subchapter E with an extensively restructured and expanded new Subchapter J for the reasons detailed above.

The following sections in Title 40, Chapters 108 and 109, were published for repeal in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4849):

Chapter 108, Subchapter B, §108.63. The content of this section as amended is being transferred to Chapter 101, Subchapter J, Division 3, as new §101.8011, and §101.8013 and §101.8015.

Chapter 109, Subchapter B, §§109.241, 109.243, and 109.245. The content of these sections as amended is being transferred to Chapter 101, Subchapter J, Division 4, as new §§101.8057, 101.8059, and 101.8061.

The following statutes and regulations authorize the proposed rule changes: The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq.; the regulations of the Department of Education, Rehabilitation Services Administration, 34 C.F.R. Parts 361, 363, 364, 365, 366, and 367, as amended; Texas Human Resources Code, Chapters 81, 82, 91 and 111; Texas Occupations Code, Chapter 53; The Individuals with Disabilities Education Act, as amended, 20 U.S.C. §1400 et seq. and implementing regulations; 34 C.F.R. Part 303, as amended; and the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, as amended.

Bill Wheeler, DARS Chief Financial Officer, estimates that for each year of the first five years that the rules are in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting the rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas.

Mr. Wheeler has also determined there should be no material economic cost to persons who are required to comply with the proposed rules. Further, in accordance with Government Code §2001.022, he has determined that the proposed rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Wheeler has determined that the proposed rules will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756.

SUBCHAPTER E. APPEALS AND HEARING PROCEDURES FOR VOCATIONAL REHABILITATION AND INDEPENDENT LIVING PROGRAMS

DIVISION 1. GENERAL RULES

40 TAC §101.811, §101.821

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531,

§531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.811. Motion for Reconsideration.

§101.821. Civil Action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2008.

TRD-200803074

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 424-4050

DIVISION 2. DIVISION FOR BLIND SERVICES APPEALS AND HEARING PROCEDURES

**40 TAC §§101.851, 101.853, 101.855, 101.857, 101.859,
101.861, 101.863, 101.865, 101.867, 101.869, 101.871,
101.873, 101.875, 101.877, 101.879, 101.881, 101.883**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.851. Purpose and Scope.

§101.853. Legal Authority and Scope.

§101.855. Definitions.

§101.857. Filing a Request for Review.

§101.859. Assignment of Impartial Hearing Officer.

§101.861. Powers and Duties of the Impartial Hearing Officer.

§101.863. Reasonable Accommodations.

§101.865. Failure To Attend Hearing and Default.

§101.867. Witness Fees.

§101.869. Dismissal Without Hearing.

§101.871. Discovery.

§101.873. Order of Proceedings.

§101.875. Transcription of Proceedings.

§101.877. Documentary Evidence and Official Notice.

§101.879. Pleadings.

§101.881. Impartial Hearing Officer Decision.

§101.883. Mediation Procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2008.

TRD-200803075

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 424-4050

DIVISION 3. DIVISION FOR REHABILITATION SERVICES APPEALS AND HEARING PROCEDURES

**40 TAC §§101.901, 101.903, 101.905, 101.907, 101.909,
101.911**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.901. Purpose and Scope.

§101.903. Definitions.

§101.905. General Requirements.

§101.907. Mediation and Due Process Hearings.

§101.909. Finality of the Hearing Officer's Decision.

§101.911. Time for Hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050

SUBCHAPTER J. APPEALS AND HEARING PROCEDURES

DIVISION 1. GENERAL RULES

**40 TAC §§101.7001, 101.7003, 101.7005, 101.7007,
101.7009, 101.7011, 101.7013, 101.7015, 101.7017, 101.7019,
101.7021, 101.7023, 101.7025, 101.7027, 101.7029, 101.7031,
101.7033, 101.7035, 101.7037, 101.7039, 101.7041, 101.7043,
101.7045, 101.7047, 101.7049**

The new rules are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531,

§531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.7001. Purpose and Scope.

(a) This chapter establishes procedures:

(1) in Division 1 of this subchapter, that govern generally all administrative hearings and appeals;

(2) in Division 2 of this subchapter, that govern appeals concerning the vocational rehabilitation services, independent living and comprehensive rehabilitation programs of the Division for Blind Services and Division for Rehabilitation Services;

(3) in Division 3 of this subchapter, that govern hearings concerning the provision of appropriate early intervention services to a child or child's family; and

(4) in Division 4 of this subchapter, that govern hearings concerning the suspension, revocation or probation of a certificate holder's certificate granted under the provisions of Chapter 81, Human Resources Code, and Chapter 57, Government Code.

(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Department or the substantive rights of any person.

(c) A person's decision to seek an informal resolution under Divisions 2 and 4 of this subchapter, of matters about which the person is dissatisfied shall not prevent, compromise, or delay the person's access to formal resolution procedures in this subchapter.

§101.7003. Legal Authority.

The following statutes and regulations authorize the procedures established by this subchapter:

(1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq., and regulations of the Department of Education, 34 CFR Part 361, 362, 363, 364, 365, and 367 as amended;

(2) Texas Human Resources Code, Chapter 91 (concerning vocational rehabilitation services for the blind and visually-impaired);

(3) Texas Human Resources Code, Chapter 111 (concerning vocational rehabilitation services for the disabled);

(4) The Individuals with Disabilities Education Act, as amended, 20 U.S.C. §1400 et seq., and 34 C.F.R. §303.1 et seq., as amended (concerning early intervention services for children with disabilities and developmental delays);

(5) Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, as amended;

(6) Texas Human Resources Code, Chapters 81 and 82 (concerning services for the deaf); and

(7) Texas Government Code, Chapter 57 (concerning court interpreter certification program for interpreters for hearing-impaired individuals).

§101.7005. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. The use of the singular or plural case is not meant to be limiting unless the context clearly indicates otherwise.

(1) Act--The Rehabilitation Act of 1973 as amended, 29 U.S.C. Section 701, et seq.

(2) Appellant--An applicant, eligible individual, authorized representative, or parent who has initiated formal procedures under this subchapter.

(3) Applicant--A person who has applied for services but for whom an eligibility determination has not been made.

(4) Authorized representative--An attorney authorized to practice law in the State of Texas, or a person designated by a party to represent the party in hearing procedures. The term includes a parent or a person made legally responsible for the child by a court of competent jurisdiction.

(5) Commissioner--The chief executive officer of the Department of Assistive and Rehabilitative Services.

(6) Consumer--The term "consumer" refers to and includes a person who:

(A) under Division 2 of this subchapter, has been determined eligible for and is receiving services from the Department;

(B) under Division 3 of this subchapter, is a parent, child or the child's family; or

(C) under Division 4 of this subchapter, not only has been determined eligible for and receiving services from the Department, but is also an individual defined by §101.8055(d) of this subchapter (relating to Definitions).

(7) Department--The Department of Assistive and Rehabilitative Services (also referred to as "DARS"), its officers, employees, and agents.

(8) Discovery--The process by which a party, prior to any final hearing on the merits, may obtain evidence and other information which is relevant to a claim or defense in the appeal.

(9) Eligible individual--Any individual person determined by the Department to be eligible to receive vocational rehabilitation services.

(10) Hearing--A formal review conducted under this chapter. This term includes pre-hearing conferences.

(11) Impartial hearing officer (IHO)--A person who is appointed to conduct a hearing under this chapter.

(12) Parent--

(A) Under Division 2 of this subchapter, the term "parent" whether in the singular or plural shall mean a minor child's natural or adoptive parent, the spouse of the minor child's natural or adoptive parent, or the minor child's surrogate or foster parent, or the spouse of the surrogate or foster parent, or other person made legally responsible for the minor child by a court of competent jurisdiction.

(B) Under Division 3 of this subchapter, the meaning of term "parent" shall be the same as that in 34 C.F.R. §303.19.

(13) Party--A person or agency named or admitted to participate in a formal hearing.

(14) Person--Any individual, representative, corporation, or other entity, including any public or nonprofit corporation, or agency or instrumentality of federal, state, or local government.

(15) Record--The official record of a hearing, including all arguments, briefs, pleadings, motions, intermediate rulings, orders, evidence received or considered, statements of matters officially noticed, questions and offers of proof, objections and rulings on objections, proposed findings of fact, conclusions of law, hearing officer decision, any other decision, opinion, or report by the hearing officer or commis-

sioner, and all Department memoranda or data, including consumer and applicant files, submitted to or considered by the impartial hearing officer.

§101.7007. Filing a Request for Review.

(a) Persons who may file a Request for Review.

(1) Under Division 2 of this subchapter, an applicant or eligible individual who is dissatisfied with a determination made by the staff of the Department that affects the provision of vocational rehabilitation services may request a review of the determination.

(2) Under Division 3 of this subchapter, a parent may initiate a hearing involving the identification, evaluation, or placement of or the provision of appropriate early intervention services to a child or child's family.

(3) Under Division 4 of this subchapter, a certificate holder.

(b) A request for a review brought:

(1) under Division 2 of this subchapter, shall be filed, as provided in §101.7059 of this subchapter (relating to Filings) with the Hearings Coordinator, DARS Legal Services;

(2) under Division 3 of this subchapter, shall be filed, as provided in §101.8015 of this subchapter (relating to Appeal of Final Decision) with the assistant commissioner for ECI or, with the Hearings Coordinator, DARS Legal Services, if that assistant commissioner so delegates; and

(3) under Division 4 of this subchapter, shall be filed as provided in §101.8063 and §101.8065 of this subchapter (relating to Filing a Request for Hearing and Filings).

§101.7009. Time for Hearing.

A hearing conducted under Division 2 of this subchapter, by an impartial hearing officer, selected in accordance with this Division 1, will be held within 60 days of an applicant's or eligible individual's request for review of a determination made by the Department that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time.

§101.7011. Assignment of Impartial Hearing Officer.

(a) The Department's authorized representative shall select, on a random basis, or by agreement between the Department's representative and the appellant, or if appropriate, the appellant's authorized representative or a parent, an impartial hearing officer from a pool of persons qualified according to these rules.

(b) The impartial hearing officer shall be an individual who:

(1) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(2) has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal and state regulations governing the provision of services for appeals under Division 2 of this subchapter;

(3) has received training specified by the Department with respect to the performance of official duties; and

(4) has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(c) An individual is not considered to be an employee of a public agency for the purposes of subsection (b) of this section solely because the individual is paid by the agency to serve as a hearing officer.

(d) In addition to those qualifications in subsections (a) - (c) of this section, an impartial hearing officer who conducts hearings under Division 3 of this subchapter must have knowledge about the provisions of the Individuals with Disabilities Education Act; the rules promulgated under that act; and services available for eligible children and their families.

§101.7013. Powers and Duties of Impartial Hearing Officer.

(a) The impartial hearing officer shall have the authority and duty to:

(1) conduct a full, fair, and impartial hearing;

(2) take action to avoid unnecessary delay in the disposition of the proceeding; and

(3) maintain order.

(b) The impartial hearing officer has the power to regulate the course of the hearing, including the power to:

(1) administer oaths;

(2) take testimony;

(3) rule on questions of evidence;

(4) rule on discovery issues;

(5) issue orders relating to hearing and pre-hearing matters, including orders granting motions to subpoena witnesses and imposing non-monetary sanctions regarding discovery;

(6) admit or deny party status;

(7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(8) grant continuance(s);

(9) request parties to submit legal memoranda, proposed findings of fact, and conclusions of law; and

(10) issue decisions based on findings of fact and conclusions of law.

(c) Unless required for the disposition of ex parte matters authorized by law, the impartial hearing officer may not directly or indirectly communicate in connection with any issue of fact or law with the commissioner or any party or a party's authorized representative, except on notice and opportunity for each party to participate.

(d) The authority of the impartial hearing officer concerning any discovery under subsection (b) of this section is subject to the authority granted by these rules or the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

§101.7015. Substitution of Impartial Hearing Officer.

(a) If for any reason an impartial hearing officer is unable to continue presiding over a pending hearing, or issue a decision after the conclusion of the hearing, another impartial hearing officer shall be designated as a substitute to complete the hearing and render a decision in accordance with these rules.

(b) The substitute impartial hearing officer may use the existing record and may conduct further proceedings as are necessary and proper to conclude the hearing and render a decision.

§101.7017. Reasonable Accommodations.

(a) Any hearing or proceedings conducted under this subchapter shall be held, whenever feasible, by telephone, but at a time and place reasonably accessible either to the appellant or the certificate holder and any witnesses, and convenient for parties. In considering

the physical location of a hearing or proceeding, the impartial hearing officer shall consider, among other factors:

(1) the suitability of any proposed facilities for a hearing, including such accommodations as the ability either of the appellant or the certificate holder and any witnesses to gain physical access to the facilities; and

(2) the comparative distances and times required to travel from places of work or residence to a proposed hearing location by parties and witnesses.

(b) The Department shall, upon reasonable notice, provide the appellant with readers or interpreters during proceedings conducted pursuant to this subchapter. Reasonable notice shall be considered to be no fewer than five working days prior to the proceeding unless good cause for a shorter period of time shall exist in the judgment of the impartial hearing officer.

(c) A copy of a transcript prepared during hearing proceedings and all notices and documents shall be provided to the appellant in an accessible format upon request.

§101.7019. Appearance of Parties at Hearings; Representation.

(a) An individual may represent himself or herself.

(b) A party may be represented by an attorney authorized to practice law in Texas or by any other representative authorized by the party to represent him or her.

(c) A party's authorized representative shall be copied on all notices, pleadings, and other correspondence.

(d) A party's authorized representative remains the representative of record in absence of a formal request to withdraw and an order approving such withdrawal issued by the impartial hearing officer.

(e) The Department is not responsible for expenses incurred by appellants seeking remedy through this subchapter, and representation and attorney fees and related expenses are the responsibility of the individual parties.

§101.7021. Failure to Attend Hearing and Default.

If, after receiving a notice of a hearing, a party or the party's authorized representative fails to attend a hearing, the impartial hearing officer may proceed and, where appropriate, may issue a default decision against the absent party.

§101.7023. Witness Fees.

(a) Any witness or deponent who is not a party to and who is subpoenaed or otherwise appears at any hearing or proceeding at the instance of the Department is entitled to receive reimbursement as provided in the Texas Government Code, §2001.103.

(b) The Department is not responsible for expenses incurred by any witness or deponent who is not a party to and who is subpoenaed or otherwise appears at any hearing or proceeding at the instance of the appellant.

(c) The party calling or deposing an expert witness shall be responsible for all fees and expenses charged by the expert witness.

§101.7025. Pre-hearing Conferences.

(a) The impartial hearing officer may hold a pre-hearing conference to resolve matters preliminary to the hearing. At the discretion of the impartial hearing officer, a pre-hearing conference may be held by telephone.

(b) A pre-hearing conference may be convened to address any or all of the following matters:

- (1) notice or jurisdiction;
- (2) scope or party status;
- (3) location of hearing;
- (4) factual and legal issues;
- (5) motions;
- (6) issuance of subpoenas;
- (7) discovery disputes;
- (8) scheduling;
- (9) stipulations;
- (10) settlement conferences;
- (11) requests for official notice;
- (12) identification and exchange of documentary evidence;
- (13) admissibility of evidence;
- (14) identification and qualification of witnesses;
- (15) order of presentation; and
- (16) such other matters as shall promote the orderly and prompt conduct of the hearing.

§101.7027. Dismissal Without Hearing.

(a) The impartial hearing officer may entertain motions for dismissal without a hearing for the following reasons:

- (1) failure to pursue the hearing;
- (2) unnecessary duplication of proceedings, res judicata, or collateral estoppel;
- (3) withdrawal of the request for hearing;
- (4) moot questions;
- (5) lack of jurisdiction;
- (6) failure to raise a material issue in the pleading; and
- (7) failure of a party or authorized representative to appear at a scheduled hearing.

(b) If the impartial hearing officer finds that such motion should be granted, the impartial hearing officer may enter a final order of dismissal.

§101.7029. Conduct of Hearing.

(a) On a genuine issue in a contested case, each party or authorized representative is entitled to:

- (1) call witnesses, including parties;
- (2) offer evidence;
- (3) cross-examine any witness called by another party; and
- (4) make opening and closing statements.

(b) Once the hearing is begun, the parties and authorized representatives may be off the record only when the impartial hearing officer permits. If the discussion off the record is pertinent, then the impartial hearing officer will summarize the discussion for the record.

(c) Objections shall be timely noted in the record.

(d) The impartial hearing officer may continue a hearing from time to time and from place to place. If the time and place for the proceeding to reconvene are not announced at the hearing, a notice shall be mailed stating the time and place of hearing.

(e) The impartial hearing officer may question witnesses and parties and/or direct the submission of supplemental evidence.

§101.7031. Order of Proceedings.

(a) A case shall be called to order by the impartial hearing officer.

(b) Proceedings under Divisions 2 and 3 of this subchapter shall be conducted according to the following:

(1) The appellant may state briefly the nature of the claim or defense, what the appellant expects to prove, and the relief sought. Immediately thereafter, the Department may make a similar statement, and any other parties will be afforded similar rights as determined by the impartial hearing officer. The impartial hearing officer may limit the time available for each party or authorized representative with respect to such statement.

(2) Evidence shall then be introduced by the appellant. The Department, or the Department's authorized representative, and any other parties shall have the opportunity to cross-examine each of the appellant's witnesses.

(3) Cross-examination is not limited solely to matters raised on direct examination. Parties or authorized representatives are entitled to redirect and recross-examination.

(4) Unless the statement has already been made, the Department or the Department's authorized representative may briefly state the nature of the claim or defense, what the Department expects to prove, and the relief sought.

(5) Evidence, if any, shall be introduced by the Department. The appellant and any other parties shall have the opportunity to cross-examine each of the Department's witnesses.

(6) Any other parties may make statements and introduce evidence. The appellant and the Department shall have opportunity to cross-examine the other parties' witnesses.

(7) The parties may present rebuttal evidence.

(8) The parties may be allowed to make either oral or written closing statements at the discretion of the impartial hearing officer.

(9) The impartial hearing officer may examine any witness and party.

(c) The order of proceedings set out in subsection (b) of this section shall apply to proceedings under Division 4 of this subchapter, except that the Department shall bear the burden of proof and shall be entitled to present its case first subject to cross-examination by the certificate holder and any other parties. Once the Department rests, the certificate holder may present the certificate holder's case.

(d) The impartial hearing officer may permit deviations from this order of procedure in the interest of justice or to expedite the proceedings.

(e) Parties shall provide four copies of each exhibit offered.

(f) Burden of proof. The party seeking affirmative relief, either on the case as a whole or on an issue, shall bear the burden of proof to prove the affirmative of the issue, or the party's case as a whole, by a preponderance of the evidence. In cases brought under Division 4 of this subchapter, the Department shall bear the burden of proof.

§101.7033. Rules of Evidence.

(a) The rules of evidence as applied in nonjury civil cases by the district courts of the state of Texas shall apply to a hearing under this subchapter.

(b) Exceptions: evidence inadmissible under the rules of evidence applied in nonjury civil cases by the district courts of the state of Texas may be admitted:

(1) if it consists of any documents contained in any file of the Department related to the appellant; or

(2) if it is:

(A) necessary to ascertain the facts not reasonably susceptible of proof under those rules;

(B) not precluded by statute; and

(C) of a type on which reasonably prudent persons commonly rely in the conduct of their affairs.

(c) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

§101.7035. Transcription of Proceedings.

(a) Unless precluded by law, the hearing shall be recorded electronically by tape recorder or similar device either by the IHO or by someone designated by the IHO. Such tape recording shall be the official record of the testimony adduced during the hearing. Any party, however, may request, at the party's expense, that the hearing be recorded by a court reporter if the request is made within ten (10) days of the date for the hearing.

(b) In lieu either of a recording of the testimony electronically or of the reporting of testimony by a court reporter, the parties to a hearing may agree upon a statement of the evidence, agree to use taped transcriptions as a statement of the testimonial evidence, or agree to the summarization of testimony before the hearing officer; provided, however, that proceedings or any part of them must be transcribed on written request of any party.

(c) Unless otherwise provided in this subchapter, the party requesting a transcription of any electronic recording of the proceedings shall bear the cost for the transcribing of any such electronically recorded testimony. Nothing provided for in this section limits the Department to a stenographic record of the proceedings.

§101.7037. Prepared Testimony.

In all proceedings and after service of copies upon all parties of record at such time as may be designated by the impartial hearing officer, the prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

§101.7039. Pleadings

(a) In a formal appeal, all pleadings, for which no other form is prescribed, shall contain:

(1) the name of the party making the pleading;

(2) the names of all other known parties;

(3) a concise statement of the facts alleged and relied upon;

(4) a prayer stating the type of relief, action, or order desired;

(5) any other matter required by law;

(6) a certificate of service, as required by these rules; and

(7) the signature of the party or the party's authorized representative making the pleading.

(b) Any pleading filed pursuant to a formal appeal may be amended up to 14 days prior to the hearing. Amendments filed after that time shall be accepted at the discretion of the impartial hearing officer.

(c) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the Department.

(d) All pleadings relating to any matter pending before the Department shall be filed with the impartial hearing officer and all parties.

(e) All pleadings shall be in a format and medium reasonably calculated to provide the required information and must be clear and legible.

(f) Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the authorized representative.

(g) The party or the party's authorized representative filing the pleading shall include a signed certification that a true and correct copy of the pleading has been served on every other party.

§101.7041. Continuance.

(a) The impartial hearing officer, at his or her discretion, may grant a continuance to further the interests of justice. No motion for continuance shall be granted, unless it is made in writing or stated in the record, and the motion shall set forth the specific grounds upon which the party seeks the continuance.

(b) Unless made during a pre-hearing or hearing, a party seeking a continuance, cancellation of a scheduled proceeding, or extension of an established deadline must file such motion no later than 10 days before the date or deadline in question. A motion filed fewer than 10 days before the date or deadline in question must contain a certification that the movant contacted the other party or party's authorized representative and whether or not it is opposed by the party or party's authorized representative. Further, if a continuance to a certain date is sought, the motion must include a proposed date or dates and must indicate whether the other party or party's authorized representative contacted agrees on the proposed new date or dates.

§101.7043. Motion for Reconsideration.

(a) Any party to a hearing may file a motion for reconsideration within 20 days after the party is notified of the issuance of the decision of the impartial hearing officer. The motion shall be filed as follows:

(1) for hearings held under Divisions 2 and 4 of this subchapter with the Hearings Coordinator, DARS Legal Services, and

(2) for hearings held under Division 3 of this subchapter with the Assistant Commissioner for ECI, or with the Hearings Coordinator, DARS Legal Services, if the Assistant Commissioner so designates.

(b) The motion for reconsideration must specify the matters in the decision of the impartial hearing officer which the party considers to be erroneous. Any response to the motion for reconsideration must be filed no later than thirty days after a party, or a party's attorney or representative, is notified of the issuance of the decision of the impartial hearing officer.

(c) The impartial hearing officer shall rule on the motion for reconsideration no later than 15 days after receipt of the motion, or after receipt of the response to the motion for reconsideration, whichever comes later. If the motion is granted, the IHO shall issue a decision upon reconsideration within an additional 15 days. If the impartial

hearing officer fails to rule on the motion for reconsideration within 15 days, the motion is denied as a matter of law.

(d) Service. Service of the impartial hearing officer's decision or of a motion or response under this section shall be made by any of the following means to a party, a party's attorney, or representative:

(1) hand-delivery;

(2) courier-receipted delivery;

(3) regular first-class mail, certified, or registered mail;

(4) email or facsimile transmission before 5:00 p.m. on a business day to the recipient's current email address or telecopier number; or

(5) such other means as the impartial hearing officer may direct.

(e) Date of service. The date of service is the date of hand-delivery, of delivery by courier, of mailing, of emailing, or of facsimile transmission, unless otherwise required by law. Unless the contrary is shown, a decision, motion, or response that is sent by regular first-class mail shall be presumed to have been received within three (3) days of the date of post-marking, if enclosed in a wrapper addressed to the recipient's last known address with return address to the sender, stamped with the appropriate first-class postage, and deposited on the date post-marked with the U.S. Postal Service.

§101.7045. Civil Action.

(a) Any party who disagrees with the findings and decision of an impartial hearing officer has a right to bring a civil action in any court of competent jurisdiction without regard to the amount in controversy.

(b) A person must initiate a civil action for review of a decision of an impartial hearing officer by filing a petition not later than the thirtieth day after the date on which the decision that is the subject of complaint is final and appealable.

§101.7047. Mediation Procedures.

(a) An applicant, eligible individual, or parent who has initiated a proceeding under this subchapter may request mediation to resolve the dispute. The Department, with the consent of the applicant, eligible individual, or parent, may also originate the request for mediation.

(b) Mediation shall be voluntary on the part of the parties; must not be used to deny or delay the right of an individual to a hearing under this subchapter; or to deny any other right afforded by the Rehabilitation Act; and shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The Department shall bear all costs related to the mediation process.

(d) Upon receiving a request for mediation from the parties, the Hearings Coordinator shall select an individual from a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of vocational rehabilitation, independent living services, comprehensive rehabilitation services, or the provision of services by Early Childhood Intervention Services, whichever may be applicable to the dispute.

(e) Sessions in the mediation process shall be coordinated by the mediator in a timely manner at a location convenient to both parties in the dispute.

(f) All discussions that occur during the mediation sessions are confidential and may not be used as evidence in any subsequent due

process hearing or civil proceeding. The mediator may require the parties to sign a confidentiality pledge prior to the commencement of the mediation process.

(g) Any agreement reached through the mediation process shall be documented in a written mediation agreement and signed by the parties to the dispute. The agreement then becomes a part of the consumer record.

§101.7049. Computation of Time.

(a) In computing any period of time prescribed or allowed by the rules in this subchapter, by order of an IHO, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not be included.

(b) Unless otherwise provided by the rules in Subchapter J of this chapter, the last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be counted for any purpose in any time period of five days or less in the rules under Subchapter J of this chapter.

(c) In computing the time periods required for filing a motion for reconsideration (§101.7043 of this subchapter (relating to Motion for Reconsideration)) and for appealing to a court of competent jurisdiction, a final decision of an IHO (§101.7045 of this subchapter (relating to Civil Action)), Saturdays, Sundays and legal holidays shall be included.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2008.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 424-4050



DIVISION 2. DIVISION FOR BLIND SERVICES AND DIVISION FOR REHABILITATION SERVICES

40 TAC §§101.7051, 101.7053, 101.7055, 101.7057, 101.7059, 101.7061, 101.7063, 101.7065, 101.7067, 101.7069, 101.7071, 101.7073

The new rules are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.7051. Purpose and Scope.

(a) This Division 2 establishes procedures under which an applicant or eligible person may appeal a determination made either by the Division for Blind Services or by the Division for Rehabilitation Services that affects the provision of vocational rehabilitation services,

independent living services and comprehensive rehabilitation services for that applicant or eligible person.

(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Department or the substantive rights of any person.

§101.7053. Legal Authority and Scope.

(a) The following statutes and regulations authorize the procedures established by the chapter:

(1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq. and regulations of the Department of Education, Rehabilitation Services Administration, 34 C.F.R. §361.57 et seq., as amended.

(2) Texas Human Resources Code Chapter 91 (concerning vocational rehabilitation services for the blind and visually-impaired);

(3) Texas Human Resources Code Chapter 111 (concerning vocational rehabilitation services for the disabled); and

(4) Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, as amended.

(b) The procedures in this Division 2 of this subchapter, apply to those determinations that concern the denial, reduction, suspension or termination of vocational rehabilitation services, independent living or comprehensive rehabilitation services by the Department and are available to any applicant or consumer who is dissatisfied with a determination made by staff of the Department.

(c) Ineligibility. The following may challenge a determination of ineligibility through the procedures of this Division 2:

(1) applicants who are found ineligible for vocational rehabilitation services; and

(2) previously eligible individuals who have been determined no longer eligible for vocational rehabilitation services under 34 C.F.R. §361.43.

(d) Unless a decision concerns the denial, reduction, suspension or termination of services, or concerns the nature or content of a consumer's Individualized Plan of Employment, or the delivery or quality of vocational counseling services or other services provided by DARS, decisions made in the course of providing services by the Department's staff are not determinations subject to review by appeal under the procedures of this subchapter.

(e) A person's decision to seek an informal resolution to matters about which the person is dissatisfied shall not prevent, compromise, or delay the person's access to formal resolution procedures in this Division 2.

(f) The Department shall not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and the development of an Individualized Plan of Employment, pending a resolution of an applicant or eligible individual's appeal by mediation or hearing unless:

(1) the applicant or eligible individual requests a suspension, reduction or termination of services; or

(2) the Department has evidence that the applicant or eligible individual obtained the services through misrepresentation, fraud, collusion, or criminal conduct.

§101.7055. Definitions.

The words and terms defined in §101.7005 of this subchapter (relating to Definitions), when used in this Division 2, shall have the same

meanings unless the context clearly indicates otherwise. The use of the singular or plural case is not meant to be limiting unless the context clearly indicates otherwise.

§101.7057. Filing a Request for Review.

(a) Any applicant or eligible individual, who is dissatisfied with a determination as described in §101.7053 of this subchapter (relating to Legal Authority and Scope) made either by the Division for Blind Services or the Division for Rehabilitation Services, may request a review of the determination. Although no prescribed form is required to file a request, preprinted forms for this purpose shall be maintained in every Department office and are available upon request.

(b) The request for a review shall be filed in writing with the Hearings Coordinator, DARS Legal Services.

(1) A request shall be considered filed on the day that it is received by the Hearings Coordinator.

(2) Preprinted forms for this purpose are available upon request either from the Hearings Coordinator, DARS Legal Services, or from any Department office.

(c) Upon receiving a request for review, the Hearings Coordinator, DARS Legal Services, shall, no later than the next working day, mail the appellant:

(1) the name, address, and phone number of the Client Assistance Program established pursuant to federal law;

(2) the name of the impartial hearing officer appointed to hear the appeal, and the date, time and place of any pre-hearing;

(3) a copy of applicable hearing procedures; and

(4) notice that the appellant has the right to request mediation procedures.

(d) Timeliness of a request for review. A request shall be considered timely if it is received by the Department no later than 180 days from the date of the determination which is the subject of an applicant or eligible individual's request for review.

§101.7059. Filings.

(a) All filings shall be sent to the Department, 4800 North Lamar, Suite 300, Austin, Texas 78756, with the notation "Attention: Hearings Coordinator," or delivered to the Department at that address.

(b) A copy of all filings shall be sent by mail or otherwise delivered to all parties.

(c) A certificate of service, signed by the person making the filing, showing the manner of service, stating that the filing has been served on all other parties, and identifying those parties shall be contained in or attached to all filings. The certificate is prima facie evidence of service.

§101.7061. Discovery and Mandatory Disclosures.

(a) Written Discovery. Requests for disclosure of information shall be the only form of written discovery which the parties shall be entitled to make. Unless a party is ordered by the IHO during a pre-trial conference to disclose other information in addition to the items in this section, a party may request in writing that the other party disclose or produce the following:

(1) the names, addresses and phone numbers of persons having knowledge of relevant facts, including those who might be called as witnesses and any expert who might be called to testify;

(2) for any testifying expert:

(A) the subject matter on which the expert will testify;

(B) the expert's resume; and

(C) a brief summary of the substance of the expert's mental impressions and opinions and the basis for them; and all documents and tangible things reflecting such information;

(3) the issues and in general the factual basis for a party's claims and defenses in the appeal; and

(4) information concerning appellant's employment, including the appellant's job application with the appellant's current employer and any personnel evaluations.

(b) Subject to the provisions in this section, parties may obtain discovery regarding any matter which is relevant to a claim or defense in the appeal.

(c) All discovery requests should be directed to the party from which discovery is being sought.

(d) All disputes with respect to any discovery matter shall be filed with and resolved by the impartial hearing officer.

(e) All parties shall be afforded a reasonable opportunity to file objections and motions to compel with the impartial hearing officer regarding any and all discovery requests.

(f) Copies of discovery requests and documents filed in response thereto shall be filed on all parties, but should not be filed with the impartial hearing officer or the Hearings Coordinator unless directed to do so by the impartial hearing officer or when in support of objections, motions to compel, motions for protective order, or motions to quash.

(g) Any documents contained in any file of the Department related to the appellant are to be deemed admissible. The Department must, without awaiting either an order or a discovery request under subsection (a) of this section, provide to the appellant a complete copy of the appellant's record of services, as described in 34 CFR §361.47, including any electronically-stored or preserved records.

§101.7063. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy or excerpts.

(b) When numerous similar documents which are otherwise admissible are offered into evidence, the impartial hearing officer may limit the documents received to those which are typical and representative. The impartial hearing officer may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties be given the right to examine the documents from which such abstracts were made.

(c) The following laws, rules, regulations, and policies are officially noticed:

(1) The Rehabilitation Act of 1973, as amended, 29 United States Code §701, et seq.;

(2) Division of Education regulations, 34 Code of Federal Regulations, Parts 361, 362, 363, 364, 365, and 367;

(3) Texas Human Resources Code, Chapter 91 and Chapter 111;

(4) Department of Assistive and Rehabilitative Services, Division for Blind Services' and Division for Rehabilitation Services' State Plan for Vocational Rehabilitation Services;

(5) Department of Assistive and Rehabilitative Services, Division for Blind Services, Vocational Rehabilitation and Independent

Living Manuals; and Division for Rehabilitation Services, Rehabilitation Policy Manual;

(6) Texas Administrative Code, Title 40, Part 2, Department of Assistive and Rehabilitative Services.

(d) Official notice also may be taken of:

(1) all facts that judicially cognizable; and

(2) generally recognized facts within the area of the Department's specialized knowledge.

§101.7065. Impartial Hearing Officer Decision.

(a) Within 30 days of the hearing completion date, the impartial hearing officer shall issue a decision that is based on the evidence and which is consistent with the provisions of the approved state plan, the Rehabilitation Act of 1973, as amended, federal vocational rehabilitation regulations, and state regulations and policies that are consistent with federal requirements, and shall provide to the appellant or, if appropriate, the appellant's authorized representative, and the Department's authorized representative or DARS Legal Services, as appropriate, a full written report of the findings of fact, conclusions of law, and any other grounds for the decision.

(b) The hearing completion date shall be that date upon which the impartial hearing officer receives the transcript, if any was prepared, of the oral hearing, or, if no transcript was prepared, the date of the adjournment of the hearing.

(c) The decision shall address each issue considered by the impartial hearing officer.

(d) The impartial hearing officer may prescribe such remedies as are appropriate within the scope of, and permitted by, the Human Resources Code, Chapters 91 and 111; Rehabilitation Act; the regulations of Rehabilitation Services Administration of the Department of Education; and the Department's policies and rules.

(1) The impartial hearing officer may not award restitutionary, compensatory or monetary relief, including monetary damages to any party.

(2) The impartial hearing officer may not prescribe an action affecting the employment of an employee of the Department.

§101.7067. Finality of the Hearing Officer's Decision.

The decision of the impartial hearing officer shall be the Department's final decision, and, unless a timely motion for reconsideration is filed, that decision becomes the final decision of the Department.

§101.7069. Implementation of Final Decision.

If a party brings a civil action to challenge a final decision of a hearing officer, the final decision involved shall be implemented pending review by the court.

§101.7071. Motion for Reconsideration.

Either party to a hearing may file a motion for reconsideration with the Hearings Coordinator, DARS Legal Services, as provided in §101.7043 of this subchapter (relating to Motion for Reconsideration).

§101.7073. Appeal of Final Decision.

A party aggrieved by a final decision may bring an action for judicial review as provided in §101.7045 of this subchapter (relating to Civil Action).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



DIVISION 3. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

40 TAC §§101.8011, 101.8013, 101.8015

The new rules are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.8011. Administrative Hearings Concerning Individual Child Rights.

(a) Purpose. This section is intended to bring the procedures for hearings of the department into compliance with Part C of the Individuals with Disabilities Education Act, and the applicable federal regulations, 34 Code of Federal Regulations §303.1 et seq. This section supplements existing department rules governing hearings and is intended to be applied together except where a conflict exists, in which case this section shall prevail.

(b) Definition. The term "public agency," when used in this section refers to the department and any other political subdivision of the state responsible for providing early childhood services to eligible children and their families.

(c) Applicability. These sections shall apply to hearings under this Division 3 which involve the identification, evaluation, or placement of or the provision of appropriate early intervention services to the child and the child's family.

(d) Request for hearing.

(1) A parent may initiate a hearing on any matter described in subsection (c) of this section and in §101.7007 of this subchapter (relating to Filing a Request for Review).

(2) The request for hearing shall be in writing and filed as provided in §101.7007 of this subchapter with the ECI Assistant Commissioner. The request for hearing shall be deemed filed when actually received by the ECI Assistant Commissioner.

(e) Impartial hearing officer.

(1) Hearings shall be conducted by an impartial hearing officer appointed and selected as provided in §101.7011 of this subchapter (relating to Assignment of Impartial Hearing Officer) and §101.7015 of this subchapter (relating to Substitution of Impartial Hearing Officer). The hearing officer shall be a person who, in addition, to the qualifications listed in §101.7011 of this subchapter:

(A) is knowledgeable about the provision of ECI comprehensive services;

(B) is knowledgeable about the provisions of complaint management, needs of children and families, and the services available to the child and family;

(C) will listen to viewpoints about the complaint, examine information relevant to issue, and seek to reach timely resolution of the complaint; and

(D) will provide records of the proceedings, including written decision.

(2) The person shall not be an employee of the department or any program involved in the provision of services or care to the child or the child's family, or have a personal or professional interest which would conflict with his or her objectivity in the hearing.

(3) A person is not an employee of an agency solely because the person is paid to implement the complaint resolution process.

(f) Hearing rights. In addition to those rights provided parties to a hearing under Division 1 of this subchapter (relating to General Rules), a party to a hearing shall have a right to:

(1) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early childhood intervention comprehensive services;

(2) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(3) obtain a written or electronic verbatim record of the hearing; and

(4) obtain written findings of fact, conclusions of law, and decision.

(g) Hearing procedures. In addition to the procedures provided in Division 1 of this subchapter:

(1) The hearing officer shall afford the parties an opportunity for hearing after reasonable notice of not less than 10 days, unless the parties have agreed otherwise.

(2) The hearing officer may issue subpoenas and commissions to take depositions pursuant to the Government Code, Chapter 2001. Subpoenas and commissions to take depositions shall be issued in the name of the Department.

(3) The hearing officer shall issue a final decision no later than 30 days after a request for hearing is filed. A final decision must be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact must be based exclusively on the evidence and on matters officially noticed pursuant to the Government Code, Chapter 2001. The final decision shall be transmitted to each party by the hearing officer.

(4) Hearings conducted under these sections will be closed to the public unless the parent requests that the hearing be open.

(h) Child's status during proceedings.

(1) During the pendency of any administrative proceeding regarding a complaint, unless the parties agree otherwise, the child involved in the complaint must continue to receive appropriate comprehensive services previously agreed upon.

(2) If the complaint involves an application for initial admission to a program, the child must receive those comprehensive services not in dispute.

§101.8013. Motion for Reconsideration.

Either party to a hearing may file a motion for reconsideration with the Hearings Coordinator, DARS Legal Services, as provided in §101.7043 of this subchapter (relating to Motion for Reconsideration).

§101.8015. Appeal of Final Decision.

A party aggrieved by a final decision may bring an action for judicial review as provided in §101.7045 of this subchapter (relating to Civil Action).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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DIVISION 4. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

40 TAC §§101.8051, 101.8053, 101.8055, 101.8057, 101.8059, 101.8061, 101.8063, 101.8065, 101.8067, 101.8069, 101.8071, 101.8073, 101.8075, 101.8077, 101.8079

The new rules are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.8051. Purpose, Scope and Authority.

(a) This Division 4 establishes rules and procedures for hearings conducted under the provisions of Texas Human Resources Code, Chapter 81, and Texas Government Code, Chapter 57, whenever DARS proposes to suspend or revoke a certificate or place a certificate holder on probation.

(b) The provisions of Texas Human Resources Code, Chapters 81 and 82, Texas Occupations Code, Chapter 53, and Texas Government Code, Chapters 57 and 2001, authorize these rules and procedures.

(c) Except as otherwise noted in this Division, the rules and procedures of this Division shall apply to all certificate holders, including certified court interpreters.

§101.8053. Rules and Procedures Governing Hearings.

Unless otherwise provided in this Division 4, the rules and procedures in Division 1 of this subchapter, shall govern hearings conducted under this Division 4.

§101.8055. Definitions.

(a) The words and terms defined in §101.7005 of this subchapter (relating to Definitions), when used in this Division 4, shall have the same meanings unless the context clearly indicates otherwise. The use of the singular or plural case is not meant to be limiting unless the context clearly indicates otherwise.

(b) Board for Evaluation of Interpreters--refers to the board created under Texas Human Resources Code §81.007.

(c) Certificate holder--means an interpreter issued a certificate by the Department under the provisions of Texas Human Resources

Code, Chapter 81, or Texas Government Code, Chapter 57. Unless otherwise noted, certificate holder and interpreter shall have the same meaning.

(d) Consumer--includes any individual, whether deaf, hearing impaired, or hearing, who is part of an interpreted conversation.

(e) Director--means the Director of the Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services.

(f) Office--means the Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services.

§101.8057. Revocation and Suspension of a Certificate.

(a) The Office, based on the recommendation of the Board for Evaluation of Interpreters, may revoke or suspend a certificate or place a certificate holder on probation for a violation of a statute, rule, or policy of the department. If a certificate holder is placed on probation, the Office may require the practitioner:

(1) to report regularly to the Office on matters that are the basis of the probation;

(2) to limit practice to those areas prescribed by the Office;
or

(3) to continue or renew professional education until a satisfactory degree of skill has been attained in those areas that are the basis of the probation.

(b) Emergency Suspension. The Office, through its Director, may issue an emergency suspension order to any BEI certificate holder, except for BEI certified court interpreters, if the Director has reasonable cause to believe that the conduct of any certified interpreter creates an imminent danger to public health or safety.

(1) An emergency suspension issued by the Office is effective immediately without a hearing or notice to the certificate holder. Notice to the certificate holder shall be presumed established on the date that a copy of the signed emergency suspension order is sent to the certificate holder at the address shown in the current records of the department.

(2) A copy of the emergency suspension order shall be sent to any and all government entities, institutions, or facilities with which the certificate holder is known to be associated.

(3) If a written request for a hearing is received from the suspended certificate holder within 15 days of the date of the emergency suspension notice, the department shall conduct a hearing not later than the thirtieth day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. Any written request for a hearing received after 15 days from the date of the emergency suspension notice shall be governed by §101.8063 of this subchapter (relating to Filing a Request for Hearing).

(c) Revocation or suspension of certification of a certified court interpreter. The Department may revoke or suspend a court interpreter certification under this subchapter only after a hearing. The Department may reissue a court interpreter certificate to a person whose court interpreter certificate has been revoked if the person applies in writing to the Department and shows good cause to justify reissuance of the certificate. Copies of procedures for submitting applications for reissuance after revocation of a court interpreter certificate may be obtained from the Office.

§101.8059. Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate.

The Office may deny application; suspend or revoke certification; or otherwise discipline, reprimand, or place on probation a certificate holder for any of the following causes:

(1) violations of federal or state laws that are substantiated by credible evidence, whether or not there is a complaint, indictment, or conviction, such violations including, but not limited to, the following:

(A) any felony, including but not limited to homicide, rape, sexual abuse of a child, indecency with a child, injury to a child, aggravated assault, robbery, burglary, theft, forgery, bribery, and perjury;

(B) any misdemeanor involving moral turpitude that involves dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflects adversely on the certificate holder's honesty, trustworthiness, or fitness to interpret under the scope of the person's certificate;
or

(C) any offense involving theft or controlled substances;

(2) engaging in sexually inappropriate behavior with or comments directed at a consumer, including individuals who are part of the interpreted situation;

(3) using or being under the influence of drugs, whether or not controlled, or intoxicating liquors to an extent that affects the interpreter's professional competence;

(4) impersonating another person who holds an interpreter certification from the office;

(5) allowing another person to use their interpreter certification;

(6) representing oneself or another interpreter as having a level of certification different from the actual level of certification awarded by the office, in excess of the actual level of certification;

(7) using fraud, deception, which includes, but is not limited to cheating, or misrepresentation in an application for certification, during the certification examination or evaluation, or in the certification maintenance or renewal process;

(8) violating or aiding in the violation of the Code of Professional Conduct described in §101.8061(a)(1) of this subchapter (relating to Codes of Professional Conduct and Ethics) or, with respect to certified court interpreters only, of the Code of Ethics and Professional Responsibility of Certified Court Interpreters described in §101.8061(a)(2) of this subchapter;

(9) being grossly incompetent or grossly negligent in performing the duties as an interpreter; or having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of their duties;

(10) being adjudicated mentally incompetent by a court of competent jurisdiction;

(11) intentionally harassing, abusing, or intimidating, either physically or verbally, a consumer, including individuals who are part of the interpreted situation; a board member; evaluator; or any staff of the Department;

(12) intentionally divulging or using inappropriately any aspect of confidential information relating to the certification evaluation including content, topic, vocabulary, identity of individuals involved in the tests, skills, written test questions, and any other testing materials deemed confidential;

(13) failure to meet requirements for certification maintenance;

(14) engaging in the practice of interpreting while certification is suspended;

(15) falsification of re-certification documents by altering original letters, certificates issued through continuing education, or attendance verification; or

(16) violation of a statute, rule, or policy of the Office or Department.

§101.8061. Codes of Professional Conduct and Ethics.

(a) Applicable Codes of Conduct and Ethics.

(1) The Code of Professional Conduct of the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf, Inc. (RID), shall govern the professional conduct of interpreters/translators certified by the Office.

(2) The Code of Ethics and Professional Responsibility of Certified Court Interpreters of the Office shall govern the professional conduct of court interpreters certified under Texas Government Code, Chapter 57.

(b) Willful violation of either the NAD-RID Code of Professional Conduct or the Code of Ethics and Professional Responsibility of Certified Interpreters is grounds for suspension or revocation of certification under §101.8059 of this subchapter (relating to Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate).

(c) Copies of the Codes.

(1) Copies of the NAD-RID Code of Professional Conduct may be obtained from the National Association of the Deaf, from the Registry of Interpreters for the Deaf, Inc., or from the Office.

(2) Copies of the Code of Ethics and Professional Responsibility of Certified Court Interpreters may be obtained from the Office.

§101.8063. Filing a Request for Hearing.

(a) A certificate holder, other than a certified court interpreter, whose certificate the Department proposes to suspend, revoke, or place on probation, may request a hearing. A certified court interpreter's certificate may only be suspended or revoked by the Department after a hearing.

(b) Although no prescribed form is required to file a request, preprinted forms for this purpose shall be maintained by the Office for Deaf and Hard of Hearing Services and available upon request.

(c) The request for hearing shall be filed in writing with the Hearings Coordinator, DARS Legal Services. A request shall be considered filed on the day that it is received by the Hearings Coordinator.

(d) Upon receiving a request for review, the Hearings Coordinator, DARS Legal Services, within five business days, shall notify the certificate holder of the name of the impartial hearing officer appointed to hear the appeal, and the date, time and place of any pre-hearing.

(e) Timeliness of a request for hearing. Except as prescribed in §101.8057(b) of this subchapter, relating to a hearing request on an emergency suspension, unless good cause is shown, a request shall be considered timely if it is received by the Department's Hearings Coordinator no later than 60 days from the date the certificate holder is served according to Government Code, §2001.054(c) with written notice of the Department's proposal to revoke or suspend the certificate holder's certificate or place the certificate holder on probation.

§101.8065. Filings.

(a) All filings shall be sent to the Department, 4800 North Lamar, Suite 300, Austin, Texas 78756 with the notation "Attention: Hearings Coordinator," or delivered to the Department at that address.

(b) A copy of all filings shall be sent by mail or otherwise delivered to all parties.

(c) A certificate of service, signed by the person making the filing, showing the manner of service, stating that the filing has been served on all other parties, and identifying those parties shall be contained in or attached to all filings. The certificate is prima facie evidence of service.

§101.8067. Discovery and Evidence.

(a) The provisions of Texas Government Code, Chapter 2001, shall govern discovery and the admissibility of evidence.

(b) All discovery requests should be directed to the party from which discovery is being sought.

(c) All disputes with respect to any discovery matter shall be filed with and resolved by the impartial hearing officer.

(d) All parties shall be afforded a reasonable opportunity to file objections and motions to compel with the impartial hearing officer regarding any and all discovery requests.

(e) Copies of discovery requests and documents filed in response thereto shall be filed on all parties, but should not be filed with the impartial hearing officer or the Coordinator of Hearings unless directed to do so by the impartial hearing officer or when in support of objections, motions to compel, motions for protective order, or motions to quash.

§101.8069. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy or excerpts.

(b) When numerous similar documents which are otherwise admissible are offered into evidence, the impartial hearing officer may limit the documents received to those which are typical and representative. The impartial hearing officer may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties be given the right to examine the documents from which such abstracts were made.

(c) The following laws, rules, regulations, and policies are officially noticed:

(1) Texas Human Resources Code Chapters 81 and 82;

(2) Texas Occupation Code Chapter 53;

(3) Texas Administrative Code, Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services; and

(4) where applicable, Texas Government Code, Chapter 57.

(d) Official notice also may be taken of:

(1) all facts that judicially cognizable; and

(2) generally recognized facts within the area of the Department's specialized knowledge.

§101.8071. Impartial Hearing Officer Decision.

(a) Within 30 days of the hearing completion date, the impartial hearing officer shall issue a decision and shall provide to the ap-

pellant or, if appropriate, the appellant's authorized representative, the Director, and the Department's authorized representative a full written report of the findings of fact, conclusions of law, and any other grounds for the decision.

(b) The hearing completion date shall be that date upon which the impartial hearing officer receives the transcript, if any was prepared, of the oral hearing, or, if no transcript was prepared, the date of the adjournment of the hearing.

(c) The decision shall address each issue considered by the impartial hearing officer.

(d) The impartial hearing officer may prescribe such remedies as are appropriate within the scope of Texas Human Resources Code, Chapters 81 and 82, and Texas Occupations Code, Chapter 53.

§101.8073. Finality of the Hearing Officer's Decision.

The decision of the impartial hearing officer is the final decision of the Department, and, if no timely motion for reconsideration is filed, becomes the final decision of the Department.

§101.8075. Implementation of Final Decision.

If a party brings a civil action to challenge a final decision of a hearing officer, the final decision involved shall be implemented pending review by the court.

§101.8077. Motion for Reconsideration.

Either party to a hearing may file a motion for reconsideration with the Hearings Coordinator, DARS Legal Services, as provided in §101.7043 of this subchapter (relating to Motion for Reconsideration).

§101.8079. Appeal of Final Decision.

A party aggrieved by a final decision may bring an action for judicial review as provided in §101.7045 of this subchapter (relating to Civil Action).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Assistive and Rehabilitative Services

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 811. CHOICES

The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 811, relating to Choices:

Subchapter A. General Provisions, §811.4 and §811.5

The Commission proposes amendments to the following sections of Chapter 811, relating to Choices:

Subchapter A, General Provisions, §811.2 and §811.3

Subchapter B, Choices Services Responsibilities, §§811.11, 811.14, and 811.16

Subchapter C, Choices Services, §§811.21, 811.26, 811.27, 811.29, and 811.34

Subchapter D, Choices Work Activities, §§811.41, 811.43 - 811.46, and 811.48 - 811.51

Subchapter E, Support Services and Other Initiatives, §811.64

The Commission proposes the repeal of the following section of Chapter 811, relating to Choices:

Subchapter D, Choices Work Activities, §811.47

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of this Chapter 811 amendment is to:

--implement the regulatory requirements issued by the United States Department of Health and Human Services (HHS);

--align Chapter 811 with previously released Commission guidance (i.e., Workforce Development (WD) Letters, Technical Assistance Bulletins, policy clarifications);

--implement changes based on the findings in the State Auditor's Office October 2007 audit of the Choices program; and

--incorporate technical changes for clarification and consistency throughout the chapter.

In February 2006, the Deficit Reduction Act (DRA) of 2005 (P.L. 109-171) reauthorized the Temporary Assistance for Needy Families (TANF) program through Federal Fiscal Year 2010. In addition to providing ongoing funding for TANF, DRA also changed several provisions in law related to TANF work participation. DRA directed HHS to issue regulations regarding:

--allowable work activities;

--verification, documentation, and internal control procedures; and

--inclusion of certain child-only cases in the calculation of work participation rates.

On February 5, 2008, HHS issued TANF final regulations (final regulations), which include changes from the June 29, 2006, interim final regulations. The final regulations also provide clarification on a number of elements retained from the interim final regulations.

The final regulations become effective on October 1, 2008. Local Workforce Development Boards (Boards) have been informed of the major changes affecting Choices services, through a Commission meeting, policy concept, and conference call, prior to this proposed rulemaking. While there may be more stringent requirements under this chapter, the Commission's intent is to provide Boards the same flexibility offered under the TANF interim final regulations.

In addition to the changes made to comply with the final regulations, and to align the rules with other current federal regulations, technical changes are made to:

--simplify and clarify rule language;

--consolidate policies, procedures, and memoranda of understanding (MOUs) requirements;

--consolidate documentation, supervision, and verification requirements;

--update terminology and definitions; and

--remove obsolete provisions.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§811.2. Definitions.

Section 811.2(2) adds the term "nonrecipient parent" to the definition of Choices eligible to incorporate the federal definition of "work eligible individual," which is included as new §811.2(16). Senate Bill (SB) 589, enacted by the 80th Texas Legislature, Regular Session (2007), makes nonrecipient parents eligible to receive Choices services. This legislation was in response to the interim final regulations, which included nonrecipient parents in states' performance calculations for the first time.

Section 811.2(3)(A), the definition of exempt Choices participant, replaces the term "an adult or teen head of household" with the term "Choices eligible" to provide consistency with other definitions in this chapter.

Section 811.2(3)(B), the definition of mandatory Choices participant, replaces the text "An adult or teen head of household, including an extended TANF recipient, conditional applicant, and sanctioned family, as defined in this section" with the term "Choices eligible" to provide consistency with other definitions in this chapter.

New §811.2(9)(A) - (C) defines the term "nonrecipient parent" as adults or minor heads of household not receiving financial assistance, but living with their own children who are receiving financial assistance. The definition of nonrecipient parent is added to align with HHS's definition of "work eligible individual," as defined in new §811.2(16), which includes certain nonrecipient parents. Nonrecipient parents include parents who are not eligible for TANF cash assistance for the following reasons:

(A) disqualification by the Texas Health and Human Services Commission (HHSC). These disqualifications include parents who:

- (i) refuse to comply with Medicaid third-party resource requirements;
- (ii) do not comply with Social Security number requirements;
- (iii) are found guilty of an intentional program violation;
- (iv) fail to report the temporary absence of a certified child;
- (v) are fugitives fleeing to avoid prosecution of, or confinement for, a felony criminal conviction, or are found by a court to be violating federal or state probation or parole;
- (vi) are convicted of a felony drug offense (not deferred adjudication) committed on or after April 1, 2002; or
- (vii) refuse to cooperate with the program integrity assessment process;

(B) because they are receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI); or

(C) because they have exhausted their TANF state time limit.

SB 589 makes nonrecipient parents eligible to receive Choices services. This legislation was in response to the interim final regulations, which included nonrecipient parents in states' performance calculations for the first time.

New §811.2(13) defines the term "secondary school" as educational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a General Educational Development (GED) credential.

New §811.2(16)(A) - (C) defines the term "work eligible individual" as adults or minor heads of household receiving TANF cash assistance, and nonrecipient parents-with the following exceptions:

(A) Noncitizens who are ineligible to receive cash assistance because of their immigration status;

(B) Parents caring for a disabled family member who lives in the home (provided the need for such care is supported by medical documentation), on a case-by-case basis; and

(C) Recipients of SSI or SSDI, on a case-by-case basis.

Certain paragraphs in §811.2 have been renumbered to accommodate additions or deletions.

§811.3. Choices Service Strategy.

Section 811.3(b), requiring local policies for a Choices service strategy, is removed and incorporated in §811.4(a)(1).

Section 811.3(c) has been relettered as new §811.3(b).

Section 811.3(b)(5) removes the text "assistance with completion of secondary school or a General Educational Development (GED) credential" and replaces it with the text "secondary school" as defined in new §811.2(13) for clarity and consistency.

Section 811.3(b)(6) removes the text requiring Boards to develop MOUs with agencies to serve Choices eligibles with disabilities and incorporates it into new §811.4(c)(1).

Section 811.3(b)(9), requiring a local-level MOU in cooperation with HHSC for coordinated case management, is removed and incorporated in §811.4(c)(2).

Section 811.3(b)(10), requiring Boards to establish housing partnerships, is removed and incorporated in §811.4(c)(4).

§811.4. Policies, Memoranda of Understanding, and Procedures.

New §811.4 is added to consolidate all requirements for the development of policies, procedures, and MOUs throughout Chapter 811.

Section 811.4(a)(1) - (3) requires Boards to establish policies regarding the following:

(1) a Choices service strategy, as defined in §811.3, that coordinates various service delivery approaches to:

(A) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;

(B) utilize a work first design as referenced in §811.3(b)(2) to provide Choices participants access to the labor market; and

(C) assist former TANF recipients with job retention and career advancement in order to remain independent of TANF cash assistance;

(2) the amount of wages subsidized for subsidized employment placements; and

(3) the methods and limitations for provision of work-related expenses.

Section 811.4(b)(1) - (2) provides that Boards may establish optional policies that:

(1) require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Accounts (ITAs) as described in Chapter 841 of this title to provide Choices services for Choices participants paid for with TANF funds; and

(2) make post-employment services available to:

(A) former TANF recipients who are denied TANF cash assistance because of earnings; and

(B) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.

Section 811.4(c)(1) - (4) requires Boards to ensure that the following MOUs and collaborative partnerships are developed:

(1) Local-level MOUs with the appropriate agencies to serve Choices eligibles with disabilities to maximize their potential for success in employment;

(2) A local-level MOU in cooperation with HHSC for coordinated case management that is consistent with the MOU between HHSC and the Commission;

(3) A local-level MOU with the Texas Department of State Health Services for providing mental health and substance abuse services to Choices participants; and

(4) A collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.

Section 811.4(d)(1) - (6) requires Boards to ensure that procedures are developed to:

(1) ensure that job development services are available to Choices participants, including:

(A) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;

(B) identifying the hiring needs of employers;

(C) assisting the employer in creating new positions for Choices participants based on the job developer's and employer's analysis of the employer's business needs; or

(D) finding opportunities with an employer for a specific Choices participant or a group of Choices participants;

(2) ensure that job placement services are available to Choices participants;

(3) notify applicants and conditional applicants, in conjunction with HHSC, on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;

(4) notify HHSC of applicants and conditional applicants who have contacted a Texas Workforce Center to request alternative WOAs;

(5) ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, as identified in §811.3(c)(7)(A) and (B); and

(6) determine a family's inability to obtain child care.

Section 811.4(e) requires that Boards electing to establish one or more of the optional policies described in §811.4(b) shall ensure that corresponding procedures are also developed for those policies.

§811.5. Documentation, Verification, and Supervision of Work Activities.

New §811.5 consolidates all requirements for documentation, verification, and supervision of Choices work activities throughout the chapter.

Section 811.5(a) clarifies that all required information, including but not limited to pay stubs, contact names, and time sheets related to the documentation and verification of participation in Choices work activities, as described in §811.5, shall be documented and verified in The Workforce Information System of Texas (TWIST), the Agency's automated information system. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Section 811.5(b) clarifies that all participation in Choices shall be verified and documented and that self-attestation is not allowed. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Section 811.5(c) requires that participation in paid work activities, as described in §§811.42 - 811.44 of Subchapter D, be documented and verified at least monthly in TWIST unless participation is projected, as described in §811.34(3) of Subchapter C. If participation is projected, participation in paid work activities shall be documented and verified in TWIST at least every six months.

Section 811.5(d)(1) - (2) requires that participation in unpaid activities, as described in §§811.41, 811.45, and 811.46 of Subchapter D, be supervised daily and verified and documented at least monthly in TWIST, replacing the previous requirement that documentation be entered biweekly. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Section 811.5(e)(1) - (2) requires that up to one hour of unsupervised homework time for every hour of class time in unpaid activities, as described in §§811.48 - 811.50 of Subchapter D, can be counted toward a Choices participant's work requirement. All homework hours in excess of one hour per every hour of class time shall be directly monitored, supervised, verified, and documented.

Section 811.5(e)(3) requires that study or homework time in unpaid activities, as described in §§811.48 - 811.50, shall be counted only toward a Choices participant's family participation requirement if:

(A) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution; and

(B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class.

Section 811.5(e)(4) requires that good or satisfactory progress as determined by the educational institution must be verified and

documented in TWIST at least monthly for unpaid activities, as described in §§811.48 - 811.50.

Section 811.5(e)(5) requires that all participation in unpaid activities, as described in §§811.48 - 811.50, be supervised daily.

Section 811.5(e)(6) requires that all participation be verified and documented in TWIST at least monthly. Although previously not set forth in rule, this requirement conforms with Commission guidance.

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

The Commission proposes the following amendments to Subchapter B:

§811.11. Board Responsibilities.

Section 811.11(a)(1), requiring Boards to ensure that procedures are developed, in conjunction with HHSC, to notify applicants and conditional applicants on the availability of regularly scheduled WOAs and alternative WOAs, is removed and incorporated in §811.4(d)(3).

Section 811.11(a)(5), requiring Boards to ensure that procedures are developed to notify HHSC of applicants and conditional applicants who have contacted a Texas Workforce Center to request alternative WOAs, is removed and incorporated in §811.4(d)(4).

Section 811.11(d), requiring Boards to ensure that procedures are developed to ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, is removed and incorporated in §811.4(d)(5).

Certain subsections in §811.11 have been relettered, and certain paragraphs have been renumbered, to accommodate additions or deletions.

§811.14. Noncooperation.

Section 811.14(c) and (d) replace the term "Board" with the term "Agency" with regard to defining timely and reasonable attempts. Previously, Boards were required to make a timely and reasonable attempt-as defined by the Board-to contact Choices participants prior to requesting a sanction for failure to meet Choices work requirements. The rule allowed Boards to establish their own policies, procedures, and time frames for timely and reasonable attempts.

In October 2007, the State Auditor's Office (SAO) released an audit report on the Agency's Choices program. The SAO report highlights concerns surrounding the timeliness of requests to sanction customers who do not comply with Choices work requirements. In 43 percent of the sanction cases tested, SAO found that caseworkers did not request sanctions promptly for these customers. As a result, customers who were no longer eligible continued to receive Choices services.

Agency monitoring staff has also raised concerns about the lack of clearly defined time frames in Boards' timely and reasonable attempt policies. Lack of specific time frames can result in delays in requesting-and thereby imposing-sanctions. This can result in inequitable treatment of Choices participants-some may be sanctioned quickly, while for others the process is lengthy.

An Agency-standardized timely and reasonable attempt policy will ensure that Choices participants across the state receive the same information about participation requirements, the consequences of not participating, good cause, and the right to appeal sanctions. Additionally, a standardized policy will ensure equi-

table treatment and timelines for all Choices participants who fail to comply with work requirements.

§811.16. Good Cause for Choices Participants.

Section 811.16(c)(4) is deleted; new §811.16(c)(4) provides for a single good cause reason for all Choices participants caring for an ill or disabled family member regardless of whether the family member attends school full time. This change conforms with the final regulations, which now allow all work-eligible individuals caring for an ill or disabled family member to be disregarded from federal work participation rates, regardless of whether the family member attends school full time.

New §811.16(c)(6)(A) removes language referring to §811.47, which is repealed. WD Letter 59-07, issued September 27, 2007, and entitled "Choices: New and Expiring TWIST Activity Codes," removes providing child care services to Choices participants in community service as an allowed activity effective October 1, 2007, because of verification requirements in the interim final regulations, guidance provided by the Administration for Children and Families (ACF) on Texas' Work Verification Plan, and the lack of participation in this activity. The verification required by HHS is not cost-effective based on the number of participants in this activity.

Section 811.16(d) removes the requirement for Boards to promulgate policies and procedures for determining a family's inability to obtain child care and incorporates the requirement in §811.4(d)(6).

Certain paragraphs in §811.16 have been renumbered to accommodate additions or deletions.

SUBCHAPTER C. CHOICES SERVICES

The Commission proposes the following amendments to Subchapter C:

§811.21. General Provisions.

Section 811.21(d), providing Boards the option to require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Accounts (ITAs), is removed and incorporated in §811.4(b)(1) and (e).

Section 811.21(e), requiring Boards to make job development services available, is removed and incorporated in §811.4(d)(1).

Section 811.21(g), requiring Boards to make job placement services available, is removed and incorporated in §811.4(d)(2).

Certain subsections in §811.21 have been relettered to accommodate additions or deletions.

§811.26. Special Provisions Regarding Community Service.

Section 811.26(a) removes the term "participation" when referring to the required four weeks of Choices service and replaces it with the term "enrollment." This change is made for consistency with guidance on when the community service requirement begins.

Further, §811.26(a) removes the six-week limit on participation in job search and job readiness activities per federal fiscal year and replaces it with an hourly limit per 12-month period for consistency with the requirements set forth in 45 C.F.R. §261.34 and §811.27.

Section 811.26(c) removes the term "Exempt recipients who voluntarily participate in Choices services" and replaces it with the term "Exempt Choices participants." This change is made to pro-

vide consistency with the definition of exempt Choices participants in §811.2(3)(A).

§811.27. Special Provisions Regarding Job Search and Job Readiness.

Section 811.27 reflects the new federal limits on participation in job search and job readiness activities from six weeks per federal fiscal year to an hourly limit per 12-month period, as required by 45 C.F.R. §261.34. The final regulations maintain the limit of four consecutive weeks of participation in job search and job readiness activities but convert the six-week limit to hours (120 for single parents with a child under age six and 180 for all other Choices eligibles) and change the period from a federal fiscal year to a rolling 12-month period.

Section 811.27(a) changes the job search limit from six weeks to 120 or 180 hours as described in §811.27(b)(2), and changes the period of measurement for the job search and job readiness limit from a federal fiscal year to a 12-month period. These changes are necessary to comply with the final regulations.

New §811.27(b)(2)(A) reflects the change in the job search limit from six weeks to 120 hours for single parents with a child under age six and the change in the period of measurement for the job search and job readiness limit from a federal fiscal year to a 12-month period.

New §811.27(b)(2)(B) reflects the change in the job search limit from six weeks to 180 hours for all other Choices eligibles and the change in the period of measurement for the job search and job readiness limit from a federal fiscal year to a 12-month period. These changes are necessary to comply with the final regulations.

Section 811.27(b)(3) is modified to provide consistency with changes in §811.27(b)(2), stating that after four consecutive weeks of participation in job search and job readiness activities, Choices participants are not eligible for additional participation in job search and job readiness activities until they have complied with §811.26(a).

Section 811.27(c) clarifies that in order for a partial week of participation in job search and job readiness activities to count as a full week of participation, a Choices participant must participate in job search and job readiness for at least three days. This subsection is also amended to reflect the change in the period of measurement for the partial-week limit from a federal fiscal year to a 12-month period.

§811.29. Special Provisions Regarding the Fair Labor Standards Act.

Section 811.29(b) further clarifies that if a customer cannot participate in FLSA-covered activities for enough hours to satisfy the core activity requirement, Boards shall enroll the customer in additional "non-FLSA-covered" core activities to meet the core-hour requirement. This change is required to be consistent with current Agency guidance.

Section 811.29(b)(1), requiring that Choices participants shall be enrolled in additional core activities, is removed and incorporated in §811.29(b).

Section 811.29(b)(2) is deleted, thereby removing the deeming of hours provision from the Choices rules. The final regulations maintain the deeming provision, which allows states to count any family that participates the maximum hours per month allowed under the minimum-wage requirement of the Fair Labor Standards Act (FLSA) as having satisfied the 20-hour-per-week

core activity requirement--even if actual participation falls short of 20 hours per week. However, WD Letter 23-07, issued March 28, 2007, and entitled "Implementation of Amended Choices Rules," instructs Boards not to implement the deeming provision. This guidance was subsequently amended by WD Letter 23-07, Change 1, issued December 27, 2007, and entitled "Implementation of Amended Choices Rules: Update."

The deeming provision was suspended based on guidance from HHS during the process of approving Texas' Work Verification plan. HHS guidance requires Texas to deem hours based on TANF and food stamp benefits received as of the last day of the month, rather than allowing deemed hours to be determined based on benefits received at the beginning of a month. Changes to existing interfaces with HHSC are required because HHSC currently does not provide the Agency with all information needed in order to comply with federal guidance.

The lack of these interface changes results in the following:

--The Agency is unable to automate the calculation of deemed hours of participation, which is problematic because of the stricter documentation and verification requirements from HHS.

--HHSC's quarterly reports to HHS include full TANF and food stamp benefits information for all TANF recipients, however, the Agency does not receive this same complete information. Therefore, the Agency's calculation of hours to be deemed will not match HHS's calculation, which is likely to result in a lower-than-anticipated participation rate for Texas.

--Supplemental TANF and food stamp benefits can be issued at any time. Thus, Boards may count on the deeming provision to fulfill a customer's work requirement-only to discover at the end of the month that the customer has received supplemental benefits and should have participated more hours in core activities due to a reduction in deemed hours.

At present, if a customer cannot participate in FLSA-covered activities for enough hours to satisfy the core activity requirement, Boards must enroll the customer in additional non-FLSA-covered activities to meet the core-hour requirement. The Commission believes that this practice-in place prior to the interim final regulations-remains a workable solution to address concerns about implementing the deeming provision in the current environment.

§811.34. Participation Provisions.

Section 811.34(2)(A)(ii) converts excused absence provisions from days to hours. Maximum excused absences are now 80 hours per 12 months and 16 hours per month. This change conforms with the final regulations at 45 C.F.R. §261.60(b).

Section 811.34(3) adds the requirement that hours used to project participation in unsubsidized employment (other than self-employment), subsidized employment, and on-the-job training must be verified, in addition to being current and documented. This change conforms with the final regulations at 45 C.F.R. §261.60(c).

Section 811.34(3)(A) adds the requirement that hours used to project participation in self-employment must be verified, in addition to being current and documented. This change conforms with the final regulations at 45 C.F.R. §261.60(c).

SUBCHAPTER D. CHOICES WORK ACTIVITIES

The Commission proposes the following amendments to Subchapter D:

§811.41. Job Search and Job Readiness Assistance.

Section 811.41(b)(4), requiring daily supervision of participation in job search and job readiness activities, is removed and incorporated in §811.5(d).

Section 811.41(b)(5), requiring daily documentation of participation, is removed. New §811.5(d) sets forth the requirement to document participation on a monthly basis.

Section 811.41(b)(6), requiring Boards to ensure that job readiness activities that include allowable treatment or therapy activities necessary to assist Choices participants with seeking, obtaining, or retaining employment be certified by qualified medical or mental health professionals, is deleted. The final regulations at 45 CFR §261.2(g) no longer require certification of these activities-only documentation.

Section 811.41(d)(4) removes the requirement for substance abuse treatment, mental health treatment, and rehabilitation activities to be certified because the final regulations no longer require certification-only documentation. Boards are only required to ensure that the need for treatment and therapy activities is documented by a qualified medical, substance abuse, or mental health professional.

Certain paragraphs in §811.41 have been renumbered to accommodate additions or deletions.

§811.43. Subsidized Employment.

Section 811.43(c)(1) removes the requirement for Boards to set a policy establishing the amount of wage subsidies and incorporates this requirement in §811.4(a)(2).

Section 811.43(e) adds language to allow Boards to place Choices participants in subsidized employment placements where the employer is not expected to retain the participant, if successful completion of the placement is expected to result in unsubsidized employment with a different employer.

The final regulations clarify that certain statements in the interim final regulations--i.e., that subsidized employment should be of limited duration, and that employers should be expected to hire participants at the end of such placements--were intended as recommendations, not requirements.

§811.44. On-the-Job Training.

Section 811.44(b) adds language clarifying that on-the-job training may be provided on or off the work site. This change is made for consistency with the final regulations.

Section 811.44(d), requiring Boards to ensure the daily supervision of Choices participants enrolled in on-the-job-training, is deleted. Paid work activities, including on-the-job training, are supervised by the employer and Boards are not required to ensure additional supervision.

New §811.44(d) requires that Boards ensure on-the-job training placements are allotted to employers who expect to retain Choices participants as regular unsubsidized employees once the subsidized placement has ended, unless successful completion of the placement is expected to result in unsubsidized employment with a different employer.

The final regulations clarify that certain statements in the interim final regulations--i.e., that on-the-job training should be of limited duration, and that employers should be expected to hire participants at the end of such placements--were intended as recommendations, not requirements.

Boards have informed the Agency of successful programs that provide Choices participants with experience and skills that then enable them to obtain unsubsidized employment with a different employer. Boards have found these programs advantageous to service delivery strategies and--if not for the restrictions in the interim final regulations--Boards would have continued the programs.

Section 811.44(e), requiring Boards to ensure that on-the-job training is documented in TWIST at least every two weeks, is deleted; new monthly documentation requirements are set forth in new §811.5(c).

Certain subsections in §811.44 have been relettered to accommodate additions or deletions.

§811.45. Work Experience.

Section 811.45(f), requiring Boards to ensure that work experience activities are documented in TWIST at least every two weeks, is deleted, because biweekly documentation of work activities is no longer required by the final regulations; monthly verification and documentation requirements are set forth in new §811.5(d).

§811.46. Community Service.

Section 811.46(f), requiring that Choices participants in community service programs be supervised daily, is removed and incorporated in new §811.5(d).

Section 811.46(g), requiring that community services activities be documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly verification and documentation requirements are set forth in new §811.5(d).

§811.47. Child Care Services to Choices Participants in Community Service.

Section 811.47, providing child care services to Choices participants in community service as an allowed activity, is repealed. WD Letter 59-07, issued September 27, 2007, and entitled "Choices: New and Expiring TWIST Activity Codes," removes this activity effective October 1, 2007, because of verification requirements in the interim final regulations, guidance provided by ACF on Texas' Work Verification Plan, and the lack of participation in this activity. The verification required by HHS is not cost-effective based on the number of participants in this activity.

§811.48. Vocational Educational Training.

Section 811.48(d) is deleted; new §811.5(e)(1) - (3) adds that up to one hour of unsupervised homework time for every hour of class time can be counted toward a Choices participant's work requirement and any homework hours in excess of one hour per every hour of class time must be directly monitored, supervised, verified, and documented.

Section 811.48(e), requiring verification of good or satisfactory progress as determined by the educational institution, is removed and incorporated in new §811.5(e)(4).

Section 811.48(f), requiring that Choices participants in vocational education be supervised daily, is removed and incorporated in new §811.5(e)(5).

Section 811.48(g), requiring that vocational educational training be documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer

required by the final regulations; monthly verification and documentation requirements are set forth in new §811.5(e)(6).

§811.49. Job Skills Training.

Section 811.49(f), allowing Boards to count supervised study or homework time toward a Choices participant's family participation requirement under specified circumstances, is deleted; new §811.5(e)(1) - (3) adds that up to one hour of unsupervised homework time for every hour of class time can be counted toward a Choices participant's work requirement and any homework hours in excess of one hour per every hour of class time must be directly monitored, supervised, verified, and documented.

Section 811.49(g), requiring verification of good or satisfactory progress as determined by the educational institution, is deleted and incorporated in new §811.5(e)(4).

Section 811.49(h), requiring that Choices participants in job skills training be supervised daily, is deleted and incorporated in new §811.5(e)(5).

Section 811.49(i), requiring that Boards ensure job skills training is documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly documentation requirements are set forth in new §811.5(e)(6).

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential.

Section 811.50(a)(1) is removed and incorporated in §811.50(a) to clarify that educational services are not core activities for any Choices participants, including those under age 20.

Section 811.50(a)(2) is deleted and incorporated in §811.50(a) to clarify that educational services are not core activities for any Choices participants, including those under age 20.

This clarification is based on guidance from HHS during the process of approving Texas' Work Verification plan, and does not change the work requirements for Choices participants under age 20.

Section 811.50(b)(1) removes the phrase "leading to a high school diploma or a GED credential" and replaces it with "as defined in §811.2(13)," the definition of secondary school.

Section 811.50(d) is deleted; new §811.5(e)(1) - (3) adds that up to one hour of unsupervised homework time for every hour of class time can be counted toward a Choices participant's work requirement and any homework hours in excess of one hour per every hour of class time must be directly monitored, supervised, verified, and documented.

Section 811.50(e), requiring verification of good or satisfactory progress as determined by the educational institution, is removed and incorporated in new §811.5(e)(4).

Section 811.50(f), requiring that Choices participants in educational services be supervised daily, is removed and incorporated in new §811.5(e)(5).

Section 811.50(g), requiring that Boards ensure educational services are documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly documentation requirements are set forth in new §811.5(e)(6).

§811.51. Post-Employment Services.

Section 811.51(e), giving Boards the option to provide post-employment services to certain former TANF recipients, sanctioned families, and conditional applicants, is removed and incorporated in new §811.4(b)(2).

Certain subsections in §811.51 have been relettered to accommodate additions or deletions.

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

The Commission proposes the following amendments to Subchapter E:

§811.64. Work-Related Expenses

Section 811.64(b), requiring Boards to develop policies related to the methods and limitations for provision of work-related expenses, is removed and incorporated in new §811.4(a)(3).

Certain subsections in §811.64 have been relettered to accommodate additions or deletions.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules. Although we estimate that there will be a cost associated with implementing provisions of these rules of approximately \$5.1 million over the five-year period (Fiscal Year 2009-2013), there will be no *additional* costs to the state and to local governments as a result of enforcing or administering the rules. As the Agency provided in its Agency cost estimates communicated to the Legislative Budget Board (LBB) for SB 589 during the Legislature's deliberations of this legislation (prior to its ultimate enactment) during the Regular Session of the 80th Legislature in 2007, the funding for serving "nonrecipient parents" is already included in amounts in the Agency's baseline appropriation. The cost estimate for serving this population of customers has been developed by the Workforce Development Division, based on Health and Human Services Commission data. The cost estimate for serving such "nonrecipient parents" has declined significantly from those earlier Agency cost estimates communicated last year to the LBB, to approximately \$502,000 per year and \$526,000 per year for associated child care for FY 2009-2013. These estimates, however, conclude that there is not an *increase* in costs to the state because these amounts have already been appropriated to the Agency (i.e., at least for the FY 2008-2009 biennium) and will continue to be appropriated to the Agency throughout this five-year period.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide activities and support services in a more consistent manner to meet the needs of TANF recipients in order to help them become self-sufficient and independent of public assistance, and to provide employers with a skilled workforce. Additionally, failure to implement these changes as proposed may ultimately result in a financial penalty for the Choices program.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the policy concept regarding these rule amendments to the Boards for consideration and review. The Commission also conducted a conference call with Board executive directors and Board staff on May 2, 2008, to discuss the policy concept. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§811.2 - 811.5

The amendments and new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendments and new rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) (No change.)

(2) Choices eligible--An individual eligible to receive Choices services including an adult or teen head of household who

is an applicant, conditional applicant, recipient, nonrecipient parent, former recipient, or sanctioned family as defined in this chapter.

(3) Choices participant--A Choices eligible participating in or outreached for Choices services, including:

(A) Exempt Choices participant--A Choices eligible [An adult or teen head of household] who is not required under Texas Human Resources Code, Chapter 31 or Texas Health and Human Services Commission (HHSC) rules (1 TAC, Chapter 372, Texas Works)[~~;~~] to participate in Choices services, but who may voluntarily participate in Choices services.

(B) Mandatory Choices participant--A Choices eligible [An adult or teen head of household, including an extended TANF recipient, conditional applicant, and sanctioned family, as defined in this section,~~;~~] who is required under Texas Human Resources Code, Chapter 31 or HHSC rules (1 TAC, Chapter 372, Texas Works)[~~;~~] to participate in Choices services.

(4) - (8) (No change.)

(9) Nonrecipient parent--Adults or minor heads of household not receiving TANF cash assistance, but living with their own children who are receiving TANF cash assistance. Nonrecipient parents include parents who are not eligible for TANF cash assistance:

(A) due to a disqualification by the Texas Health and Human Services Commission. These disqualifications include parents who:

(i) refuse to comply with Medicaid third-party resource requirements;

(ii) do not comply with Social Security number requirements;

(iii) are found guilty of an intentional program violation;

(iv) fail to report the temporary absence of a certified child;

(v) are fugitives fleeing to avoid prosecution of, or confinement for, a felony criminal conviction, or are found by a court to be violating federal or state probation or parole;

(vi) are convicted of a felony drug offense (not deferred adjudication) committed on or after April 1, 2002; or

(vii) refuse to cooperate with the program integrity assessment process;

(B) because they are receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI); or

(C) because they have exhausted their TANF state time limit.

(10) [(9)] PRWORA--The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.

(11) [(10)] Recipient--An adult or teen head of household who receives TANF cash assistance.

(12) [(11)] Sanctioned family--An adult or teen head of household who must demonstrate cooperation for one month in order to reinstate TANF cash assistance.

(13) Secondary school--Educational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a General Educational Development (GED) credential.

(14) ~~[(42)]~~ TANF cash assistance--The cash grant provided through HHSC to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including the PRWORA, the TANF block grant statutes, the TANF State Plan, TANF cash assistance provided under Texas Human Resources Code, Chapters 31 and 34, and other related regulations.

(15) ~~[(43)]~~ Work-based services--Includes those employment programs defined in Texas Human Resources Code §31.0126.

(16) Work eligible individual--Work eligible individuals are adults or minor heads of household receiving TANF cash assistance, and nonrecipient parents--with the following exceptions:

(A) Noncitizens who are ineligible to receive cash assistance because of their immigration status;

(B) Parents caring for a disabled family member who lives in the home (provided the need for such care is supported by medical documentation), on a case-by-case basis; and

(C) Recipients of SSI or SSDI, on a case-by-case basis.

(17) ~~[(44)]~~ Work ready--A Choices eligible is considered work ready if he or she has the skills that are required by employers in the local workforce development area. A Board must ensure immediate access to the labor market to determine whether the Choices eligible has those necessary skills to obtain employment.

(18) ~~[(45)]~~ Work requirement--For the purposes of 42 U.S.C. §607 and 45 C.F.R. §261.10, a Choices eligible is deemed to be engaged in work by cooperating with:

(A) all requirements set forth in the family employment plan, as described in this chapter; and

(B) all TANF core and non-core activities, as set forth in this chapter.

§811.3. *Choices Service Strategy.*

(a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:

(1) - (2) (No change.)

(3) identify employment opportunities, which include those with a potential for career advancement that may assist a Choices eligible's progression toward ~~[towards]~~ self-sufficiency.

~~{(b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to;}~~

~~{(1) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;}~~

~~{(2) utilize a work first design as referenced in subsection (c)(2) of this section to provide Choices participants access to the labor market; and}~~

~~{(3) assist former recipients in job retention and career advancement to remain independent of TANF cash assistance.}~~

(b) ~~[(e)]~~ The Choices service strategy shall include:

(1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants and conditional applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce.

(2) Work First Design.

(A) The work first design:

(i) allows Choices participants to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and

(ii) meets the needs of employers by linking Choices participants with skills that match those job requirements identified by the employer.

(B) Boards shall provide Choices participants access to other services and activities available through the One-Stop Service Delivery Network, which includes the WOA, to assist with employment in the labor market before certification for TANF cash assistance.

(C) Post-employment services shall be provided in order to assist a Choices participant's progress toward self-sufficiency as described in subsection (b)(3) of this section and §811.51.

(D) In order to assist a Choices eligible's progress toward self-sufficiency:

(i) Boards shall provide Choices eligibles who are employed, including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID, with information on available post-employment services; or

(ii) Boards may provide Choices eligibles with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51.

(E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:

(i) employee post-employment education or training;

(ii) employee child care, transportation or other support services available to obtain and retain employment; and

(iii) employer tax credits.

(F) Boards shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for TANF cash assistance.

(3) Post-Employment Services. A Board shall ensure that post-employment services are designed to assist Choices participants with job retention, career advancement, and reemployment, as defined in §811.51. Post-employment services are a continuum in the Choices service strategy to support a Choices participant's job retention, wage gains, career progression, and progression to self-sufficiency.

(4) Adult Services. A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.

(5) Teen Services. A Board shall ensure that services for teen heads of household shall include secondary school, as defined in §811.2(13), ~~[assistance with completion of secondary school or a General Educational Development (GED) credential]~~ and making the transition from school to employment, as described in §811.30 and §811.50.

(6) Choices Eligibles with Disabilities. A Board shall ensure that services for Choices eligibles with disabilities include reasonable accommodations to allow the Choices eligibles to access and participate in services, where applicable by law. ~~[A Board shall ensure that Memoranda of Understanding (MOUs) are established with the appropriate agencies to serve Choices eligibles with disabilities; and that referrals are made, as appropriate, to allow Choices eligibles with disabilities to maximize their potential for success in employment.]~~

(7) Target Populations. A Board shall ensure that services are concentrated, as further defined in §811.11(d) and (e), on the needs of the following:

(A) recipients who have six months or less remaining of their state TANF time limit, irrespective of any extension of time due to a hardship exemption;

(B) recipients who have 12 months or less remaining of their 60-month federal TANF time limit, irrespective of any extension of time due to a hardship exemption; and

(C) recipients who are extended TANF recipients.

(8) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.

~~[(9) Local-Level MOU. A Board shall ensure the development of a local-level MOU in cooperation with HHSC for coordinated case management that is consistent with the MOU between HHSC and the Commission.]~~

~~[(10) Housing Partnerships. A Board shall establish a collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.]~~

§811.4. Policies, Memoranda of Understanding, and Procedures.

(a) A Board shall establish policies regarding the following:

(1) A Choices service strategy, as defined in §811.3, that coordinates various service delivery approaches to:

(A) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;

(B) utilize a work first design as referenced in §811.3(b)(2) to provide Choices participants access to the labor market; and

(C) assist former recipients with job retention and career advancement in order to remain independent of TANF cash assistance;

(2) The amount of wages subsidized for subsidized employment placements; and

(3) The methods and limitations for provision of work-related expenses.

(b) A Board may establish optional policies that:

(1) require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems as described in Chapter 841 of this title to provide for Choices services for Choices participants and paid for with TANF funds; and

(2) make post-employment services available to:

(A) former recipients who are denied TANF cash assistance because of earnings; and

(B) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.

(c) A Board shall ensure that the following Memoranda of Understanding (MOUs) and collaborative partnerships are developed:

(1) Local-level MOUs with the appropriate agencies to serve Choices eligibles with disabilities to maximize their potential for success in employment;

(2) A local-level MOU in cooperation with HHSC for coordinated case management that is consistent with the MOU between HHSC and the Commission;

(3) A local-level MOU with the Texas Department of State Health Services for providing mental health and substance abuse services to Choices participants; and

(4) A collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.

(d) A Board shall ensure that procedures are developed:

(1) to ensure that job development services are available to Choices participants. These services include:

(A) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;

(B) identifying the hiring needs of employers;

(C) assisting an employer in creating new positions for Choices participants based on the job developer's and employer's analysis of the employer's business needs; or

(D) finding opportunities with an employer for a specific Choices participant or a group of Choices participants;

(2) to ensure that job placement services are available to Choices participants. Job placement services shall include:

(A) identifying employers' workforce needs;

(B) identifying Choices participants who have sufficient skills and abilities to be successfully linked with employment; and

(C) matching the skills of the Choices participant pool to the hiring needs of local employers;

(3) to notify applicants and conditional applicants-in conjunction with HHSC-on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;

(4) to notify HHSC of applicants and conditional applicants who contacted a Texas Workforce Center to request alternative WOAs;

(5) to ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, as identified in §811.3(c)(7)(A) and (B). Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a Choices eligible's ability to participate, and targeted job development; and

(6) to determine a family's inability to obtain child care.

(e) If a Board elects to establish one or more of the optional policies described in subsection (b) of this section, the Board must ensure that corresponding procedures are developed for those policies.

§811.5. Documentation, Verification, and Supervision of Work Activities.

(a) A Board shall ensure that all required information related to the documentation and verification of participation in Choices work activities, as described in this section, is documented in The Workforce Information System of Texas (TWIST).

(b) A Board shall ensure that all participation in Choices is verified and documented and that self-attestation is not allowed.

(c) For paid work activities, as described in §§811.42, 811.43, and 811.44, Boards shall ensure that all participation is verified and documented in TWIST at least monthly. If participation is projected as described in §811.34(3), current and verified participation must be documented in TWIST at least every six months.

(d) For unpaid activities, as described in §§811.41, 811.45, and 811.46, Boards shall ensure that all participation is:

- (1) supervised daily; and
- (2) verified and documented in TWIST at least monthly.

(e) For unpaid activities, as described in §§811.48, 811.49, and 811.50, Boards shall ensure that:

(1) no more than one hour of unsupervised study or homework time per each hour of class time is counted toward a Choices participant's family participation requirement;

(2) all study and homework time in excess of one hour per hour of class time is directly monitored, supervised, verified, and documented;

(3) study or homework time is only counted toward a Choices participant's family participation requirement if:

(A) the study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution; and

(B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;

(4) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;

(5) all participation is supervised daily; and

(6) all participation is verified and documented in TWIST at least monthly.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

40 TAC §§811.11, 811.14, 811.16

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.11. *Board Responsibilities.*

(a) A Board shall ensure that:

~~{(1) procedures are developed, in conjunction with HHSC, to notify applicants and conditional applicants on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;}~~

(1) ~~{(2)}~~ the WOA is offered frequently enough to allow applicants and conditional applicants to comply with the HHSC requirement that gives applicants and conditional applicants 10 calendar days from the date of their eligibility interview to attend a WOA;

(2) ~~{(3)}~~ during a regularly scheduled WOA or alternative WOA, applicants and conditional applicants are informed of:

(A) employment services available through the One-Stop Service Delivery Network to assist applicants and conditional applicants in achieving self-sufficiency without the need for TANF cash assistance;

(B) benefits of becoming employed;

(C) impact of time-limited benefits;

(D) individual and parental responsibilities; and

(E) other services and activities, including education and training, available through the One-Stop Service Delivery Network, including services and referrals for services available to Choices eligibles with disabilities;

(3) ~~{(4)}~~ alternative WOAs are developed that allow applicants and conditional applicants with extraordinary circumstances to receive the information listed in paragraph (2) ~~{(3)}~~ of this subsection;

~~{(5) procedures are developed to notify HHSC of applicants and conditional applicants who contacted a Texas Workforce Center to request alternative WOAs;}~~

(4) ~~{(6)}~~ verification that applicants and conditional applicants attend a scheduled or alternative WOA is completed and HHSC is notified in accordance with HHSC rules (1 TAC, Chapter 372, Texas Works); and

(5) ~~{(7)}~~ applicants and conditional applicants are provided with an appointment to develop a family employment plan.

(b) - (c) (No change.)

~~{(d) A Board shall develop policies and procedures to ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, as identified in §811.3(e)(7)(A) and (B). Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a Choices eligible's ability to participate, and targeted job development.}~~

(d) ~~{(e)}~~ A Board shall ensure that all extended TANF recipients are outreached and offered the opportunity to participate in Choices activities.

(e) ~~{(f)}~~ A Board shall ensure that post-employment services, including job retention and career advancement services, are available to Choices eligibles including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving EID.

(f) ~~{(g)}~~ A Board shall ensure that the monitoring of work requirements is ongoing and frequent, as determined by a Board, unless otherwise specified in this chapter, and consists of the following:

(1) ensuring receipt of support services;

(2) tracking and reporting support services;

(3) tracking and reporting actual hours of participation, at least monthly, unless otherwise specified in this chapter;

(4) determining and arranging for any intervention needed to assist the Choices participant in complying with work requirements;

(5) ensuring that the Choices participant is progressing toward achieving the goals and objectives in the family employment plan; and

(6) monitoring all other work requirements.

(g) [(h)] A Board shall ensure that:

(1) no less than four hours of training regarding family violence is provided to staff who:

(A) provide information to Choices eligibles;

(B) request penalties or grant good cause; or

(C) provide employment planning or employment retention services; and

(2) Choices eligibles who are identified as being victims of family violence are referred to an individual or an agency that specializes in issues involving family violence.

(h) [(i)] A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices participants, including verification of participation hours, and data is entered into [The Workforce Information System of Texas (TWIST)].

(i) [(j)] A Board shall ensure that a referral program is developed to provide Choices eligibles facing higher than average barriers to employment, as described in this chapter, with referrals to pre-employment and post-employment services offered by community-based and other organizations.

§811.14. Noncooperation.

(a) - (b) (No change.)

(c) A Board shall ensure that timely and reasonable attempts, as defined by the Agency [Board], are made to contact a mandatory Choices participant prior to requesting a penalty to:

(1) - (2) (No change.)

(d) A Board shall ensure that timely and reasonable attempts, as defined by the Agency [Board], are made to contact a sanctioned family and conditional applicants upon discovery of noncooperation during their demonstrated cooperation period to determine if good cause exists.

(e) - (f) (No change.)

§811.16. Good Cause for Choices Participants.

(a) - (b) (No change.)

(c) The following reasons may constitute good cause for purposes of this chapter:

(1) - (3) (No change.)

[(4) Caring for a disabled family member who does not attend school full time and requires the Choices participant's presence in the home. Boards shall ensure the need for such care is supported by medical documentation;]

(4) [(5)] Caring for a disabled family member who [attends school full time and] requires the Choices participant's presence in the home. Boards shall ensure the need for such care is supported by medical documentation;

(5) [(6)] A demonstration that there is:

(A) no available transportation and the distance prohibits walking; or

(B) no available job within reasonable commuting distance, as defined by the Board;

(6) [(7)] An inability to obtain needed child care, as defined by the Board and based on the following reasons:

(A) Informal child care by a relative or under other arrangements is unavailable or unsuitable[- and based on, where applicable, Board policy regarding child care as specified in §811.47]. Informal child care may also be determined unsuitable by the parent;

(B) Eligible child care providers are unavailable, as defined in Chapter 809 of this title;

(C) Affordable child care arrangements within maximum rates established by the Board are unavailable; and

(D) Appropriate child care within a reasonable distance from home or the work site is unavailable;

(7) [(8)] An absence of other support services necessary for participation;

(8) [(9)] Receipt of a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

(9) [(10)] An individual or family crisis or a family circumstance that may preclude participation, including substance abuse, mental health, and disability-related issues, provided the Choices participant engages in problem resolution through appropriate referrals for counseling and support services; or

(10) [(11)] A Choices participant is a victim of family violence.

(d) A Board shall [promulgate policies and procedures for determining a family's inability to obtain child care and shall] ensure that mandatory Choices participants in single-parent families caring for children under age six are informed of:

(1) the penalty exception to the family work requirement, including the criteria and applicable definitions for determining whether a mandatory Choices participant has demonstrated an inability to obtain needed child care, as defined in subsection (c)(6)(A) - (D) [(e)(7)(A) - (D)] of this section.

(2) (No change.)

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §§811.21, 811.26, 811.27, 811.29, 811.34

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.21. General Provisions.

(a) - (c) (No change.)

~~{(d) A Board may, through local policies and procedures, require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems as described in Chapter 841 of this title to provide for Choices services for Choices participants and paid for with TANF funds.}~~

~~{(e) A Board shall, through local policies and procedures, make available job development services, which include:}~~

~~{(1) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;}~~

~~{(2) identifying the hiring needs of employers;}~~

~~{(3) assisting the employer in creating new positions for Choices participants based on the job developer's and employer's analysis of the employer's business needs; or}~~

~~{(4) finding opportunities with an employer for a specific Choices participant or a group of Choices participants.}~~

~~{(d) [(f)] A Board shall ensure that job development services identify, at a minimum, job openings for current mandatory Choices participants.}~~

~~{(g) A Board shall, through local policies and procedures, make available job placement services. Job placement services shall include:}~~

~~{(1) identifying employers' workforce needs;}~~

~~{(2) identifying Choices participants who have sufficient skills and abilities to be successfully linked with employment; and}~~

~~{(3) matching the skills of the Choices participant pool to the hiring needs of local employers.}~~

§811.26. Special Provisions Regarding Community Service.

(a) Choices participants, with the exception of those described in §811.30 and §811.33, who are not in an employment activity, must be placed into community service after four weeks of enrollment ~~[participation]~~ in Choices ~~[services]~~. Choices participants who are not in an employment activity after reaching their hourly limit per 12-month period, as set forth in §811.27, [six-week limit per federal fiscal year] in job search and job readiness activities must be placed into community service. An employment activity is defined as:

(1) - (4) (No change.)

(b) (No change.)

(c) Exempt Choices participants ~~[recipients who voluntarily participate in Choices services]~~ are not subject to the requirements set forth in subsection (a) of this section.

§811.27. Special Provisions Regarding Job Search and Job Readiness.

(a) Choices participants in unsubsidized employment as defined in §811.42, who lose that employment, may participate in job

search activities as defined in §811.41(c) and job readiness activities as defined in §811.41(d) unless they have reached the 120- or 180-hour [six-week] limit per 12-month period set forth in subsection (b)(2) of this section [federal fiscal year].

(b) Job search and job readiness activities as defined in §811.41 are limited as follows:

(1) (No change.)

(2) Choices participants may not be enrolled for more than: [six weeks of total activity in a federal fiscal year;]

(A) 120 hours per 12-month period for single parents with a child under age six; and

(B) 180 hours per 12-month period for all other Choices eligibles; and

(3) After four consecutive weeks of participation in job search and job readiness activities, Choices participants are not eligible for additional participation in job search and job readiness activities until they have complied with §811.26(a) [in order for Choices participants to qualify for their remaining two weeks of job search and job readiness, they must first comply with §811.26(a)], which requires that Choices participants be engaged in an employment activity or in community service.; and]

(c) A Board may count a partial week (i.e., three or four days) of participation in job search and job readiness activities as a full week of participation only once for any Choices participant in a 12-month period [only once per federal fiscal year may a partial week count as a full week of participation, per Choices participant].

§811.29. Special Provisions Regarding the Fair Labor Standards Act.

(a) (No change.)

(b) The number of hours that a Choices participant is required to participate in community service or another unpaid work activity shall be determined in compliance with FLSA as described in subsection (a) of this section. If a Choices participant's hours of community service or other unpaid work activity are not sufficient to meet the core work activity requirement as set forth in §811.25(b) - (d), the Choices participant shall be enrolled in additional non-FLSA-covered core activities.;

~~{(1) the Choices participant shall be enrolled in additional core activities; or}~~

~~{(2) Boards shall deem the remaining core hours as having met the core work activity requirement.}~~

§811.34. Participation Provisions.

A Board shall count only actual hours of participation in TANF core and non-core activities as allowable work participation hours with the following exceptions, unless otherwise specified in this chapter:

(1) (No change.)

(2) For unpaid work activities set forth in §811.41 and §§811.45 - 811.50, Boards may count short-term excused absences as actual participation if they meet the following conditions:

(A) A short-term excused absence:

(i) (No change.)

(ii) totals a maximum of 80 [40] additional hours [days] within a 12-month period and does not exceed 16 hours of [two] excused absences per month.

(B) (No change.)

(3) A Board may project participation hours in unsubsidized employment (except self-employment), subsidized employment, and on-the-job training, up to six months at a time, using an average of four weeks of current, verified, and documented actual hours. For self-employment, a Board:

(A) may project participation hours in self-employment, up to six months at a time, using an average of three months of current, verified, and documented actual hours.

(B) (No change.)

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SUBCHAPTER D. CHOICES WORK ACTIVITIES

40 TAC §§811.41, 811.43 - 811.46, 811.48 - 811.51

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.41. *Job Search and Job Readiness Assistance.*

(a) (No change.)

(b) A Board shall ensure that job search and job readiness activities:

(1) - (3) (No change.)

~~[(4) are supervised daily.]~~

~~[(5) are documented daily in TWIST.]~~

~~[(6) are allowable treatment or therapy activities that include substance abuse treatment, mental health treatment, or rehabilitation activities determined to be necessary to assist Choices participants with seeking, obtaining, or retaining employment. Boards shall ensure treatment and therapy activities are certified by a qualified medical or mental health professional.]~~

(c) (No change.)

(d) Job readiness activities are designed to assist Choices participants with addressing issues that will aid them in seeking, obtaining, and retaining employment, including:

(1) - (3) (No change.)

(4) substance abuse treatment, mental health treatment, and rehabilitation activities, if the need for treatment and therapy activities is documented by a qualified medical, substance abuse, or mental health professional;

~~[(5) mental health treatment;]~~

~~[(6) rehabilitation activities;]~~

(5) ~~[(7)]~~ job counseling;

(6) ~~[(8)]~~ interviewing skills and practice interviews; and

(7) ~~[(9)]~~ assistance with applications and resumes.

(e) (No change.)

§811.43. *Subsidized Employment.*

(a) - (b) (No change.)

(c) Wages.

(1) Wages shall be at least federal or state [State] minimum wage, whichever is higher. ~~[Boards must set a policy to establish the amount of the wage that is subsidized.]~~

(2) (No change.)

(d) (No change.)

(e) Boards shall ensure subsidized employment placements are allotted to employers who expect to retain Choices participants as regular unsubsidized employees once the subsidized placement has ended, unless successful completion of the placement is expected to result in unsubsidized employment with a different employer.

§811.44. *On-the-Job Training.*

(a) (No change.)

(b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer a Choices participant for subsidized, time-limited training activities, to assist the Choices participant with obtaining knowledge and skills that are essential to the workplace while in a job setting. On-the-job training is training by an employer that is provided to a Choices participant on or off the work site while engaged in productive work in a job that:

(1) - (4) (No change.)

(c) (No change.)

(d) Boards shall ensure on-the-job training placements are allotted to employers who expect to retain Choices participants as regular unsubsidized employees once the on-the-job training placement has ended, unless successful completion of the placement is expected to result in unsubsidized employment with a different employer.

~~[(d) A Board shall ensure Choices participants enrolled in on-the-job training are supervised daily.]~~

~~[(e) A Board shall ensure on-the-job training is documented in TWIST at least every two weeks.]~~

§811.45. *Work Experience.*

(a) - (e) (No change.)

~~[(f) A Board shall ensure work experience activities are documented in TWIST at least every two weeks.]~~

§811.46. *Community Service.*

(a) - (e) (No change.)

~~[(f) A Board shall ensure Choices participants in community service programs are supervised daily.]~~

~~[(g) A Board shall ensure community service activities are documented in TWIST at least every two weeks.]~~

§811.48. *Vocational Educational Training.*

(a) - (c) (No change.)

~~{(d) Boards may count supervised study or homework time toward a Choices participant's family participation requirement if:}~~

~~{(1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;}~~

~~{(2) the educational institution's policy requires a certain number of out-of-class preparation hours for the class; and}~~

~~{(3) study or homework time is directly monitored, supervised, and documented.}~~

~~{(e) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the educational institution.}~~

~~{(f) A Board shall ensure Choices participants enrolled in vocational educational training are supervised daily.}~~

~~{(g) A Board shall ensure vocational educational training is documented in TWIST at least every two weeks.}~~

§811.49. Job Skills Training.

(a) - (e) (No change.)

~~{(f) Boards may count supervised study or homework time toward a Choices participant's family participation requirement if:}~~

~~{(1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;}~~

~~{(2) the educational institution's policy requires a certain number of out-of-class preparation hours; and}~~

~~{(3) study or homework time is directly monitored, supervised, and documented.}~~

~~{(g) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the job skills training provider.}~~

~~{(h) A Board shall ensure Choices participants enrolled in job skills training are supervised daily.}~~

~~{(i) A Board shall ensure job skills training is documented in TWIST at least every two weeks.}~~

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential.

(a) Educational services, which are non-core activities as defined in §811.25(a)(2), are only available for Choices participants who have not completed secondary school or who have not received a GED credential. [as follows:]

~~{(1) Educational services for Choices participants age 20 or older are non-core activities as defined in §811.25(a)(2).}~~

~~{(2) Educational services for Choices participants who are teen heads of household age 19 and younger are core activities as defined in §811.30.}~~

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants who are age 20 and older for the following educational or other training services:

(1) secondary school, as defined in §811.2(13) [leading to a high school diploma or a GED credential], when required as a prerequisite for employment;

(2) - (3) (No change.)

(c) (No change.)

~~{(d) Boards may count supervised study or homework time toward a Choices participant's family participation requirement if:}~~

~~{(1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;}~~

~~{(2) the educational institution's policy requires a certain number of out-of-class preparation hours; and}~~

~~{(3) study or homework time is directly monitored, supervised, and documented.}~~

~~{(e) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the educational institution.}~~

~~{(f) A Board shall ensure Choices participants enrolled in educational services are supervised daily.}~~

~~{(g) A Board shall ensure educational services are documented in TWIST at least every two weeks.}~~

§811.51. Post-Employment Services.

(a) A Board shall ensure that post-employment services, which include job retention, career advancement, and reemployment services, are offered to Choices participants who are employed, and to applicants, conditional applicants, and former recipients who have obtained employment but require additional assistance in retaining employment and achieving self-sufficiency.

(b) - (d) (No change.)

~~{(e) A Board may, through local policies and procedures, make post-employment services available to:}~~

~~{(1) former recipients who are denied TANF cash assistance because of earnings; and}~~

~~{(2) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.}~~

~~(c) [(f)]~~ The post-employment services may include the following:

(1) assistance and support for the transition into employment through direct services or referrals to resources available in the workforce area;

(2) child care, if needed, as specified in rules at Chapter 809 of this title;

(3) work-related expenses, including those identified in §811.64;

(4) transportation, if needed;

(5) job search, job placement, and job development services to help a former recipient who loses a job to obtain employment;

(6) referrals to available education or training resources to increase an employed Choices eligible's skills or to help the individual qualify for advancement and long-term employment goals;

(7) additional career planning and counseling; or

(8) referral to support services available in the community.

~~(f) [(g)]~~ The maximum length of time a former recipient, conditional applicant, and sanctioned family may receive services under this section is dependent upon:

(1) family circumstances;

(2) the risk of returning to public assistance. A person is considered at risk of returning to TANF cash assistance if he or she is a food stamp recipient, or receives Commission-funded child care;

(3) the ongoing need for these services; and

(4) the availability of funds for these services.

(g) [(h)] Post-employment service providers may include employers, community colleges, technical colleges, career schools and colleges, faith-based and community-based organizations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2008.

TRD-200803036

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 475-0829



40 TAC §811.47

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.47. *Child Care Services to Choices Participants in Community Service.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2008.

TRD-200803037

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 475-0829



SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §811.64

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendments affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.64. *Work-Related Expenses.*

(a) (No change.)

[(b)] A Board shall ensure that written policies are developed related to the methods and limitations for provision of work-related expenses.]

(b) [(e)] Work-related expenses may include: tools, uniforms, equipment, transportation, car repairs, housing or moving expenses, and the cost of vocationally required examinations or certificates.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Earliest possible date of adoption: July 27, 2008

For further information, please call: (512) 475-0829



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 205. PRODUCT SAFETY

SUBCHAPTER A. BEDDING RULES

25 TAC §§205.1 - 205.17

The Department of State Health Services withdraws the proposed amendments to §§205.1 - 205.9, 205.11 - 205.17, and new §205.10 which appeared in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2112).

Filed with the Office of the Secretary of State on June 13, 2008.

TRD-200803064

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 13, 2008

For further information, please call: (512) 458-7111 x6972

25 TAC §205.10

The Department of State Health Services withdraws the proposed repeal of §205.10 which appeared in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2118).

Filed with the Office of the Secretary of State on June 13, 2008.

TRD-200803065

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 13, 2008

For further information, please call: (512) 458-7111 x6972

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.50

The Texas Ethics Commission adopts new §20.50, relating to the reporting of the total amount of political contributions maintained. The new rule is adopted without changes to the proposed text as published in the April 25, 2008, issue of the *Texas Register* (33 TexReg 3361) and will not be republished.

A campaign finance report is required to disclose the total amount of political contributions maintained as of the last day of the reporting period. Section 20.50 would clarify the statutory provisions requiring the disclosure of the total amount of political contributions maintained in one or more accounts as of the last day of the reporting period. Under §20.50, certain investments would be required to be included.

Written comments were received from Michael Toomey, Attorney at Law. Mr. Toomey opposes the rule stating that it "imposes additional burdens inconsistent with the Ethics Commission's statutory authority." Mr. Toomey also states that the rule would require that investments be disclosed that may not be maintained in an account. Mr. Toomey further states that the Ethics Commission should submit "the policy change to the legislature for its consideration."

Written comments were received from Sean Patrick Tracey with the Tracey Law Firm. Mr. Tracey opposes the rule and states that it "impermissibly imposes additional burdens over and above the Ethics Commission's statutory authority."

The Ethics Commission considers comments from all parties but was satisfied with the rule as proposed. No change was made as a result of these comments.

The new §20.50 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2008.
TRD-200803032

Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: July 1, 2008
Proposal publication date: April 25, 2008
For further information, please call: (512) 463-5800



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.1

The Office of Rural Community Affairs (Office) adopts the amendments to 10 Texas Administrative Code §255.1 for the Community Development Block Grant (CDBG) non-entitlement area funds without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2103).

The adopted rules specify criteria contained within the 2008 Action Plan.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under §487.052 of the Government Code, which provides the board with the authority to adopt rules concerning the implementation of the Office's responsibilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2008.

TRD-200803058
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Effective date: July 3, 2008
Proposal publication date: March 14, 2008
For further information, please call: (512) 936-7887



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §70.100, §70.101

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code ("TAC"), Chapter 70, §70.100 and §70.101 to adopt more recent editions of the mandatory building codes in the Industrialized Housing and Buildings ("IHB") program and to make necessary amendments to the codes. The amendments are adopted without changes to the proposed text as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3097) and will not be republished.

The purposes of the proposed amendments are to adopt more recent editions of the mandatory building codes in the IHB program and to make necessary amendments to the codes. The amended rules adopt the 2006 editions of the codes promulgated by the International Code Council (ICC) and the 2008 edition of the National Electrical Code. The code adoptions take effect October 31, 2008. Texas Occupations Code, §1202.152 requires the Industrialized Building Code Council to adopt later editions of the codes adopted by the statute if the Council determines that the use of these later code editions is in the public interest and consistent with the purposes of Texas Occupations Code, Chapter 1202. The Council made such a determination and voted to adopt these later code editions at its meeting on April 16, 2008. The Commission's adoption of the rule changes implements the Council's action.

Some of the amendments to the codes are administrative in nature, such as referencing the IHB program and the IHB statute and rules in the codes. A number of substantive amendments to the codes are required because Texas Health and Safety Code, Chapter 388 requires that subsequent editions of energy codes be at least as stringent as the 2001 editions of those codes. The Energy Systems Laboratory (part of the Texas A&M University System) has determined that in some respects the later code editions are not as stringent as the 2001 editions; therefore, a number of amendments are necessary to conform the later code editions to the 2001 editions. Amendments are also necessary to reference the Texas Accessibility Standards and to conform certain code provisions to the 2008 National Electrical Code.

The amended rules adopt the 2008 National Electrical Code (NEC), the 2006 International Building Code (IBC), the 2006 International Fuel Gas Code (IFGC), the 2006 International Plumbing Code (IPC), the 2006 International Mechanical Code (IMC), and the 2006 International Residential Code (IRC).

Section 70.100(c) is amended to update the effective dates of adoption of past code editions. The amendment is adopted so that municipalities and other interested parties will know what code editions were met for buildings constructed prior to October 31, 2008.

Section 70.101(d) specifies amendments to the International Building Code (IBC) as adopted in §70.100. Section 70.101(d)(1) is amended to make the language consistent with other code amendments. Section 70.101(d)(2) amends §101.1 of the IBC to add Texas Occupations Code, Chapter 1202 and

16 Texas Administrative Code, Chapter 70, as the governing provisions for the Texas IHB program. The amendment clarifies that the statute and rules control in the event of any conflicts between the adopted codes and the statute and rules.

Section 70.101(d)(3) amends §101.4 of the IBC to clarify that the codes adopted in §101.4.8 as well as those adopted in §§101.4.1 through 101.4.7 are considered part of the IBC and to clarify that adopted amendments to those codes are part of the IBC.

Section 70.101(d)(4) amends §101.4 of the IBC by adding §101.4.8 to specify the International Existing Building Code as the applicable code for the repair, alteration or additions, and changes of occupancy of previously occupied non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program.

Section 70.101(d)(5) amends §104.1 of the IBC to clarify that the term "building official" means either the Commission, the TDLR executive director, the Texas Industrialized Building Code Council, or the local building official in accordance with the powers and duties assigned to each in Texas Occupations Code, Chapter 1202.

Section 70.101(d)(6) amends §102.6 to add that existing industrialized buildings that bear an approved certification decal or insignia and that have not been altered or modified are considered to be in compliance with the current mandatory building codes. The revision is made to conform to the requirements of Texas Occupations Code, Chapter 1202.

Sections 70.101(d)(7) through 70.101(d)(10) amends §§110.1, 110.2, 110.3, and 110.4 of the IBC to clarify that the certificates of occupancy are issued by the local building official and that certificates of occupancy shall be issued or revoked in accordance with locally adopted rules and regulations.

Section 70.101(d)(11) amends §311.3 of the IBC to add equipment shelters as an example of the type of building that falls under occupancy group S-2. The change is made to assure that all equipment shelters are classified equally.

Section 70.101(d)(12) is amended to clarify that the Texas Accessibility Standards (TAS) apply to accessibility requirements in Texas and to delete the reference to a specific rule section in 16 Texas Administrative Code, Chapter 68. The deletion is necessary to assure that the IHB rules accurately reference the elimination of architectural barriers rules.

Section 70.101(d)(13) amends the referenced standards in chapter 35 of the IBC to assure compliance with the adoption of TAS in §70.101(d)(12), the adoption of the 2008 NEC in §70.100, and the adoption of the IEBC in §70.101(d)(4) of the IHB rules.

Section 70.101(e) specifies amendments to the IFGC as adopted in §70.100.

Section 70.101(e)(1) amends §101.1 of the IFGC to identify the code as the fuel gas code for the Texas IHB program.

Section 70.101(e)(2) amends §101.4 of the IFGC to add Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, as the governing provisions for the Texas IHB program. The amendment clarifies that the statute and rules control in the event of any conflicts between the adopted codes and the statute and rules.

Section 70.101(e)(3) amends §102.7 of the IFGC to specify the International Existing Building Code (IEBC) as the applicable

code for the repair, alteration or additions, and changes of occupancy of previously-occupied, non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program. Section 70.101(e)(4) amends §102.8 of the IFGC to clarify that adopted amendments to referenced codes are part of the IFGC.

Section 70.101(e)(5) amends the referenced standards in Chapter 8 of the IFGC to add code section 102.7 as a code referenced section for ICC Standard IEBC-06. This revision is necessary because the amendment to §70.101(e)(3) adopts the IEBC as the applicable code for the alterations of industrialized buildings and to conform to existing rules for the IHB program.

Section 70.101(f) amends the International Plumbing Code (IPC) as adopted in §70.100.

Section 70.101(f)(1) amends §101.1 of the IPC to identify the code as the plumbing code for the Texas IHB program.

Section 70.101(f)(2) amends §101.3 of the IPC to add Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, as the governing provisions for the Texas IHB program. The revision is made to clarify that the statute and rules control in the event of any conflicts between the adopted codes and the statute and rules.

Section 70.101(f)(3) amends §102.7 of the IPC to specify the International Existing Building Code (IEBC) as the applicable code for the repair, alteration or additions, and changes of occupancy of previously-occupied, non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program.

Section 70.101(f)(4) amends §102.8 of the IPC to clarify that adopted amendments are part of the IPC.

Section 70.101(f)(5) amends the referenced standards in Chapter 13 of the IPC to assure compliance with the adoption of the 2008 NEC in §70.100 and because the amendment to §70.101(f)(3) adopts the IEBC as the applicable code for the alterations of industrialized buildings and to conform to existing rules for the IHB program.

Section 70.101(g) amends the International Mechanical Code (IMC) as adopted in §70.100.

Section 70.101(g)(1) amends §101.1 of the IMC to identify the code as the mechanical code for the Texas IHB program.

Section 70.101(g)(2) amends §101.3 of the IMC to add Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, as governing provisions for the Texas IHB program. The revision is made to clarify that the statute and rules control in the event of conflicts between the adopted codes and the statute and rules.

Section 70.101(g)(3) amends §102.7 of the IMC to specify the International Existing Building Code (IEBC) as the applicable code for the repair, alteration or additions, and changes of occupancy of previously-occupied, non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program.

Section 70.101(g)(4) amends §102.8 of the IMC to clarify that adopted amendments are part of the IMC.

Section 70.101(g)(5) amends Chapter 13 of the IMC to add code section 102.7 as a code referenced section for ICC Standard IEBC-06. The revisions are necessary because the amendment to §70.101(f)(3) adopts the IEBC as the applicable code for the

alterations of industrialized buildings and to conform to existing rules for the IHB program.

Section 70.101(h) amends the International Residential Code (IRC) as adopted in §70.100.

Section 70.101(h)(1) amends §R101.1 of the IRC to identify the code as the residential code for one- and two-family dwellings for the Texas IHB program.

Section 70.101(h)(2) adds §R101.4 to the IRC to specify that the provisions of the NEC shall apply to the installation of electrical systems in residential buildings. This revision is necessary to assure compliance with the adoption of the 2008 NEC in §70.100.

Sections 70.101(h)(3) and §70.101(h)(4) amend §R202 of the IRC by adding a definition for "Glazing Area" and by amending the definition of "Townhouse." The addition of the definition for "Glazing Area" is necessary because the window to wall area ratios have been added to the prescriptive tables of Chapter 11 of the IRC. This change is necessary to satisfy the requirement of Texas Health and Safety Code, Chapter 388 that subsequent editions of energy codes be at least as stringent as the 2001 edition. The revision to the definition of "Townhouse" is necessary to be consistent with terminology commonly used in Texas.

Section 70.101(h)(5) amends §R301.2 of the IRC to add a requirement that if no criteria is established by the local authorities in accordance with this section, then the criteria shall be in accordance with the footnotes of Table R301.2(1). The revision is to clarify that climatic and design criteria shall be in accordance with the mandatory building code where there are no local authorities to set the criteria.

Section 70.101(h)(6) amends §R303.8 of the IRC to clarify that all dwellings in Texas meet the threshold requirements for required heating in accordance with the criteria set by the mandatory building codes.

Section 70.101(h)(7) amends §R317.1 of the IRC to add an exception that two-family dwellings divided by a property line through the structure shall be separated as required for townhouses. This revision is consistent with the revised definition of "Townhouse" in §70.101(h)(4).

Sections 70.101(h)(8) through 70.101(h)(22) are necessary to satisfy the "not less stringent" requirement when adopting subsequent editions of energy codes in accordance with Texas Health and Safety Code, Chapter 388.

Section 70.101(h)(8) amends §N1101.2.1 of the IRC by specifying a new table for the location of the warm humid counties for Texas.

Section 70.101(h)(9) adds §N1101.2.2 to the IRC to specify when compliance software tools may be used and which compliance software tools may be used to show compliance with the energy code.

Section 70.101(h)(10) amends Figure N1101.2 by replacing the map of Texas with the map of Texas shown in exhibit 1.

Section 70.101(h)(11) amends the IRC by deleting the climate zones for Texas from Table N1101.2 and adding climate zones and sub climate zones for Texas to Table N1101.2 as shown in exhibit 2.

Section 70.101(h)(12) amends the IRC by deleting the Texas counties from Table N1101.2.1 and adding a new Table N1101.2.2 Warm Humid Counties for Texas as shown in exhibit 3.

Section 70.101(h)(13) amends §N1101.7 of the IRC to allow alternative compliance in accordance with Texas Health and Safety Code, Chapter 388.

Section 70.101(h)(14) amends §N1102.1 of the IRC by allowing a reduction in the R-value of the roof insulation in certain cases. The revision increases the number who could use the "simplified prescriptive" approach without decreasing the energy efficiency requirements of the code.

Section 70.101(h)(15) amends the IRC by replacing Table N1102.1, Insulation and Fenestration Requirements by Component, with a new Table N1102.1 that shows insulation and fenestration requirements for Texas. The new table is shown in exhibit 4.

Section 70.101(h)(16) amends the IRC by replacing Table N1102.1.2 Equivalent U-Factors with a new Table N1102.1.2. The new table is shown in exhibit 5.

Section 70.101(h)(17) amends §N1102.3.2 of the IRC by requiring an area-weighted average solar heat gain coefficient (SHGC) of 0.40 or less in certain sub-climate zones.

Section 70.101(h)(18) amends §N1102.3.3 of the IRC to allow up to 1% of glazed fenestration to be exempt from the U-factor and SHGC requirements.

Section 70.101(h)(19) amends §N1102.3.5 of the IRC by deleting the first sentence of the code section.

Section 70.101(h)(20) amends §N1102.3.6 of the IRC by adding two exceptions. The first exception indicates that replacement fenestration may comply with the original construction documents and the second exception limits the area-weighted average SHGC to 0.40 in certain sub-climate zones.

Section 70.101(h)(21) adds to the IRC a prescriptive path for additions with new section N1102.3.7.

Section 70.101(h)(22) adds to the IRC new Table N1102.3.7, prescriptive envelope component criteria for additions and replacements. The new table is shown in exhibit 6.

Section 70.101(h)(23) deletes Part VIII, Electrical, Chapters 33 through 42 from the IRC. This revision is necessary as these chapters are based on the 2005 edition of the NEC, and the IHB program is adopting the 2008 edition of the NEC.

Section 70.101(h)(24) amends the referenced standards in Chapter 43 of the IRC because the IHB program is adopting the 2008 NEC as shown in §70.100(a) and to document acceptable energy code software compliance tools that may be used in place of the prescriptive requirements of the code.

Section 70.101(i) amends the International Existing Building Code (IEBC) as adopted in §70.101(d).

Section 70.101(i)(1) amends §101.1 of the IEBC to identify the code as the existing building code for the Texas IHB program.

Section 70.101(i)(2) amends the IEBC by replacing references to ICC A117.1 and chapter 11 of the IBC with the Texas Accessibility Standards (TAS). The revisions are made to clarify that compliance with TAS is required in Texas.

Section 70.101(i)(3) amends §101.4.1 of the IEBC to clarify that buildings constructed under previous editions of the mandatory building codes adopted by the Industrialized Building Code Council do not have to be brought up to the current mandatory building codes. This revision is to clarify the requirements of Texas Occupations Code, Chapter 1202.

Section 70.101(i)(4) amends the IEBC by deleting Chapter 11, Historic Buildings, as the Texas IHB program does not deal with historic buildings.

Section 70.101(i)(5) amends §1301.2 of the IEBC to clarify that additions, alterations or changes of occupancy of structures existing prior to the effective date of adoption of the current mandatory building codes shall comply with the provisions of the IEBC.

Section 70.101(i)(6) amends the referenced standards in Chapter 15 of the IEBC to assure compliance with the adoption of TAS in §70.101(i)(2) and the adoption of the 2008 NEC in §70.100.

Section 70.101(j) amends the International Energy Conservation Code (IECC) as adopted in §101.4 of the IBC.

Section 70.101(j)(1) amends §101.1 of the IECC to identify the code as the energy code for the Texas IHB program.

Sections 70.101(j)(2) through 70.101(j)(19) are necessary to satisfy the "not less stringent" requirement when adopting subsequent editions of energy codes in accordance with Texas Health and Safety Code, Chapter 388.

Section 70.101(j)(2) amends §103.1.1 of the IECC to allow alternative compliance in accordance with Texas Health and Safety Code, Chapter 388.

Section 70.101(j)(3) amends §202 of the IECC by adding a definition for "Glazing Area." The addition of the definition for "Glazing Area" is necessary because the window to wall area ratios have been added to the prescriptive tables of chapter 4 of the IECC.

Section 70.101(j)(4) amends §301.1 of the IECC by referencing separate figures and tables for energy zones for residential and commercial buildings.

Section 70.101(j)(5) adds new Figure 301.2, Texas Residential Climate Zones to the IECC.

Section 70.101(j)(6) amends Table 301.1 of the IECC by adding "Commercial Zones Only" next to the heading for Texas and by adding the Zone 2 moist counties for Texas to the table.

Section 70.101(j)(7) amends the IECC by adding Table 301.1(1), Residential Climate Zones and Sub-Climate Zones for Texas.

Section 70.101(j)(8) amends Table 301.2 of the IECC by adding "Commercial Buildings Only" next to the heading for Texas and by adding the zone 2 counties for Texas to the table.

Section 70.101(j)(9) amends the IECC by adding Table 301.2(1), Warm Humid Counties for Texas-Residential.

Section 70.101(j)(10) adds §401.2.1 to the IECC to specify when compliance software tools may be used and which compliance software tools may be used to show compliance with the energy code.

Section 70.101(j)(11) amends §402.1.1 of the IECC by allowing a reduction in the R-value of the roof insulation in certain cases. The revision increases the number who could use the "simplified prescriptive" approach without decreasing the energy efficiency requirements of the code.

Section 70.101(j)(12) amends the IECC by replacing Table 402.1.1, Insulation and Fenestration Requirements by Component, with a new Table 402.1.1 that shows insulation and fenestration requirements for Texas.

Section 70.101(j)(13) amends the IECC by replacing Table 402.1.3, Equivalent U-Factors, with a new Table 402.1.3.

Section 70.101(j)(14) amends §402.3.2 of the IECC by requiring an area-weighted average SHGC of 0.40 or less in certain sub-climate zones.

Section 70.101(j)(15) amends §402.3.3 of the IECC to allow up to 1% of glazed fenestration to be exempt from the U-factor and SHGC requirements.

Section 70.101(j)(16) amends §402.3.5 of the IECC by deleting the first sentence of the code section.

Section 70.101(j)(17) amends §402.3.6 of the IECC by adding two exceptions. The first exception indicates that replacement fenestration may comply with the original construction documents and the second exception limits the area-weighted average SHGC to 0.40 in certain sub-climate zones.

Section 70.101(j)(18) adds to the IECC a prescriptive path for additions with new section 402.3.7.

Section 70.101(j)(19) adds to the IECC new Table 402.3.7, prescriptive envelope component criteria for additions and replacements.

Section 70.101(j)(20) adds §501.3, Compliance Software Tools, to the IECC to specify when compliance software tools and which compliance software tools may be used to show compliance with the energy code.

Section 70.101(j)(21) amends the referenced standards in chapter 6 of the IECC to document acceptable energy code software compliance tools that may be used in place of the prescriptive requirements of the code.

Section 70.101(k) specifies amendments to the ICC Electrical Code as adopted in §101.4 of the IBC.

Section 70.101(k)(1) amends §101.1 of the ICC Electrical Code to identify the code as the electrical code for the Texas IHB program.

Section 70.101(k)(2) amends §101.3 of the ICC Electrical Code to add Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, as governing provisions for the Texas IHB program. The revision is made to clarify that the statute and rules control in the event of conflicts between the adopted codes and the statute and rules.

Section 70.101(k)(3) amends §102.1.5 of the ICC Electrical Code to specify the International Existing Building Code (IEBC) as the applicable code for the repair, alteration or additions, and changes of occupancy of previously occupied non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program.

Section 70.101(k)(4) amends §102.6 of the ICC Electrical Code to clarify that adopted amendments are part of the Electrical Code.

Section 70.101(k)(5) amends §1201.1.1 of the ICC Electrical Code to delete reference to the IRC. State law and revisions in §70.101(h) require electrical systems to comply with NFPA 70.

Section 70.101(k)(6) amends the referenced standards in chapter 13 of the ICC Electrical Code to assure compliance with the adoption of the 2008 NEC in §70.100 and the adoption of the IEBC in §70.101(d)(4) of the IHB rules and to conform to existing rules for the IHB program.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the *Texas Register* on April 18, 2008. The

comment period closed on May 19, 2008. No public comments were received in response to the proposed rules.

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement the chapter and any other law establishing a program regulated by the Department. The amendments also are adopted under Texas Occupations Code, Chapter 1202, which directs the Commission to adopt rules as necessary to ensure compliance with the purposes of Chapter 1202 and provide for uniform enforcement of Chapter 1202. Section 1202.152 further authorizes adoption of amended codes if the Industrialized Building Code Council determines that use of the amended code is in the public interest and consistent with the purposes of Chapter 1202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2008.

TRD-200803044

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: July 1, 2008

Proposal publication date: April 18, 2008

For further information, please call: (512) 463-7348

CHAPTER 82. BARBERS

16 TAC §82.72

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 82, §82.72, regarding the responsibilities of barber schools, without changes to the proposed text as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3106) and will not be republished.

The amendment will restore text to the rule that was inadvertently omitted in a prior rulemaking adoption. The Commission adopted amendments to 16 TAC §82.72, effective August 1, 2006, with no changes to subsection (g) regarding the responsibility of a barber school to ensure that each student is equipped with his or her own personal tools. However, due to an error in the agency's document submission of §82.72 to the *Texas Register*, the text for paragraphs (1) - (14) of subsection (g) was inadvertently omitted. This text is a list of specific tools that the school is to provide to a barber student. This rule adoption will correct the error.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed rule to persons internal and external to the agency. The proposed amendment was published in the *Texas Register* on April 18, 2008. The comment period closed on May 19, 2008. One public comment was received in response to the proposed rule.

The comment suggests replacing the proposed language of "one neck duster" with "three re-usable neck dusters made of plastic."

The commenter believes that this language will better facilitate cleaning and disinfecting of the neck dusters. Specifying that a neck duster must be made of plastic would allow the duster to be soaked in a disinfectant solution, and requiring three neck dusters would allow the student to use one duster while others are drying. The Department disagrees with the comment and believes that the current requirement of one neck duster is a sufficient requirement for a student kit. A neck duster, even if not made of plastic, could be sprayed with disinfectant between clients and generally could be immersed in a disinfectant solution for the minimum time necessary for disinfection. While it might be advisable for students to have more than one neck duster, the Department does not believe that the volume of customers typically seen by students would necessitate a requirement of three neck dusters.

The amendments are adopted under Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1037

The Texas Education Agency (TEA) adopts new §61.1037, concerning the Science Laboratory Grant Program. The new section is adopted without changes to the proposed text as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3107). The adopted new section implements the requirements of the Texas Education Code (TEC), §7.062, as added by House Bill 2237, 80th Texas Legislature, 2007, that charges the commissioner to adopt rules necessary to implement the Science Laboratory Grant Program.

TEC, §7.062, requires the commissioner by rule to establish procedures and adopt guidelines for the administration of the Science Laboratory Grant Program. The program is to provide competitive grants to school districts for the purpose of constructing or renovating high school science laboratories. To be eligible

for a grant, a school district must demonstrate that the existing district science laboratories are insufficient in number to comply with the curriculum requirements imposed for the recommended and advanced high school programs. The statute requires the commissioner to provide for ranking school districts that apply for grants on the basis of wealth per student and giving priority in the award of grants to districts with low wealth per student.

Adopted new 19 TAC §61.1037, Science Laboratory Grant Program, implements the TEC, §7.062, by providing applicable definitions, establishing the application process, and describing prioritization and notice of award. The adopted new rule also specifies details relating to data sources, payments, determination of need, eligible projects, deadlines and accountability, and required reports.

A school district must complete an application requesting funding under the Science Laboratory Grant Program. The application must contain a description of each high school campus for which funds are being requested, the campus's enrollment, the number of science laboratories on the campus, a certification that the existing laboratories are insufficient to comply with curriculum requirements, the number of laboratories to be constructed or renovated, and a timeline for the proposed construction or renovation projects.

A school district that participates in the Science Laboratory Grant Program must maintain contracting and financial records related to the construction project(s) for which it receives a grant so that the district can provide these records to the TEA on completion of the project(s).

The TEA determined that the adopted new section will have no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began April 18, 2008, and ended May 18, 2008. No public comments were received.

The new section is adopted under the Texas Education Code, §7.062, as added by House Bill 2237, 80th Texas Legislature, 2007, which authorizes the commissioner to adopt rules necessary to implement the Science Laboratory Grant Program, including rules addressing eligibility, application procedures, and accountability for use of grant funds.

The new section implements the Texas Education Code, §7.062.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2008.

TRD-200803090

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: July 6, 2008

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For further information, please call: (512) 475-1497



CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1053

The Texas Education Agency (TEA) adopts new §102.1053, concerning the mathematics instructional coaches pilot program. The new section is adopted with changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2452). The adopted new rule implements the requirements of the Texas Education Code (TEC), §21.4541, as added by House Bill 2237, 80th Texas Legislature, which requires the commissioner by rule to establish and implement a Mathematics Instructional Coaches Pilot Program, including approval of service providers. The adopted new rule also addresses program requirements for the awarding of grants for the Mathematics Instructional Coaches Pilot Program.

Recognizing that too many students in Texas middle, junior high, and high schools fail to meet state standards in the area of mathematics, the Texas Legislature provided legislation aimed at addressing this critical achievement issue. House Bill 2237, 80th Texas Legislature, 2007, added the TEC, §21.4541, establishing a pilot program under which participating school districts receive grants in order to contract with approved service providers for assistance in developing the content knowledge and instructional expertise of mathematics teachers at the middle school, junior high school, or high school level. The legislation requires that the commissioner establish the pilot program and adopt rules for its implementation.

Adopted new 19 TAC Chapter 102, Subchapter EE, §102.1053, implements the TEC, §21.4541, by establishing the Mathematics Instructional Coaches Pilot Program. The new rule adopts provisions that define applicable words and terms and establishes requirements relating to school district participation in the pilot program, including eligibility and conditions of operation. The adopted new rule also specifies criteria and procedures by which approved service providers will be identified and approved to assist districts participating in the pilot program. Approved service providers must demonstrate significant past effectiveness in improving mathematics instruction in middle, junior high, and high schools serving a significant number of students identified as being at risk of dropping out of school, as described by the TEC, §29.081(d).

In addition to the entities described in the TEC, §21.4541(c), the adopted new rule specifies that county departments of education and school districts are eligible to apply for approval as service providers under this grant program and serve in that capacity. However, a school district designated as an approved service provider may not be reimbursed with Mathematics Instructional Coaches Pilot Program funds for providing coaching services to teachers employed by the district.

At adoption, a technical correction was made in subsection (b) relating to pilot program participation as directed by TEA legal counsel. Subsection (b)(8) relating to sanctions was deleted and language relating to recovery of funds was clarified in subsection (b)(9) and renumbered as subsection (b)(8). Recovery of funds is the appropriate sanction for state grant compliance and not the performance-based sanctions under the TEC, Chapter 39.

The TEA determined that the adopted new section will have no direct adverse economic impact to small businesses but there may be adverse economic impact to microbusinesses (businesses with fewer than 20 employees) that choose to apply for

approved service provider status, as specified in the proposed preamble. The TEA did consider several alternative methods as specified in the proposed preamble, and that analysis resulted in no alternate options.

The public comment period on the proposal began March 21, 2008, and ended April 20, 2008. No public comments were received.

The new section is adopted under the Texas Education Code, §21.4541, which requires the commissioner by rule to establish and implement a mathematics instructional coaches pilot program, including the approval of service providers.

The new section implements the Texas Education Code, §21.4541.

§102.1053. Mathematics Instructional Coaches Pilot Program.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Approved service provider--An entity, as described in subsection (c) of this section, that has been approved through a request for qualifications (RFQ) process and designated by the commissioner of education as qualified to deliver intensive mathematics coaching and professional development to school districts approved to participate in the Mathematics Instructional Coaches Pilot Program.

(2) Mathematics Instructional Coaches Pilot Program--A pilot program established and implemented by the Texas Education Agency (TEA) in accordance with the Texas Education Code (TEC), §21.4541. Under the pilot program, participating school districts shall receive grants to provide teachers who instruct students in mathematics at the middle school, junior high school, or high school level with assistance in developing content knowledge and instructional expertise. Each participating school district must contract with an approved service provider.

(3) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(4) Shared services arrangement (SSA)--A shared services arrangement is an agreement between two or more school districts and/or education service centers that provides services for entities involved.

(b) Pilot program participation.

(1) Eligibility.

(A) Eligibility for participation in the Mathematics Instructional Coaches Pilot Program will be determined annually by the commissioner in accordance with the TEC, §21.4541, and eligibility criteria outlined in the TEC, §39.358.

(B) Education service centers (ESCs) established under the TEC, §8.001, are not eligible to apply for participation in the pilot program as the fiscal agent for an SSA or as a member in an SSA.

(2) Application process.

(A) An eligible school district must apply through the request for application (RFA) process to participate in the pilot program and include a description of how grant funds will be allocated.

(B) An eligible school district submitting an RFA on behalf of other school districts participating in an SSA must agree to serve as the fiscal agent for the grant and will be held responsible for all compliance and audit recoveries.

(C) Eligible applicants must meet all deadlines, requirements, and guidelines outlined in the RFA.

(3) Notification. The TEA will notify each applicant in writing of its selection or non-selection for participation in the Mathematics Instructional Coaches Pilot Program.

(4) Use of funds. The entire amount of a grant award must be used for the Mathematics Instructional Coaches Pilot Program as described in the RFA.

(5) Conditions of operation.

(A) Each successful applicant must operate a Mathematics Instructional Coaches Pilot Program in accordance with requirements detailed in the TEC, §21.4541, and must:

(i) select an approved service provider, as described in subsection (c) of this section, from the list provided by the TEA;

(ii) enter into a contractual relationship for mathematics instructional coaching and professional development services with the approved service provider; and

(iii) design and implement an action plan for the Mathematics Instructional Coaches Pilot Program in collaboration with the approved service provider.

(B) In addition, each successful applicant may enter into an SSA limited to no more than ten eligible districts. A school district may submit or be a member of an SSA for no more than one grant application.

(6) Program evaluation. Each school district operating an approved Mathematics Instructional Coaches Pilot Program must comply with evaluation procedures established by the commissioner as detailed in the RFA.

(7) Revocation for grantee.

(A) The commissioner may revoke grantee participation in the pilot program based on any of the following factors:

(i) noncompliance with requirements and assurances outlined in the RFA and/or the provisions of this section;

(ii) lack of program success as evidenced by progress reports and program data;

(iii) failure to meet performance standards specified in the RFA; or

(iv) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the pilot program.

(B) A decision by the commissioner to revoke authorization of a grant award is final and may not be appealed.

(8) Recovery of funds. The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

(c) Approved service providers.

(1) Eligibility. The following entities that are TEA-certified continuing professional education providers are eligible to apply for approved service provider status:

(A) academies and training centers established in conjunction with a Texas Science, Technology, Engineering, and Mathematics (T-STEM) center;

(B) regional education service centers;

(C) institutions of higher education;

(D) private organizations with significant experience in providing mathematics instruction, as determined by the commissioner;

(E) county departments of education; and

(F) school districts, under the following condition. A school district's statewide assessments in mathematics (summed across all grade levels and for "All Students" only) must meet or exceed the Recognized standard. The TEA will determine eligibility, using the most current results, which can be found in the latest district Academic Excellence Indicator System (AEIS) report.

(2) Identification and selection. In accordance with the TEC, §21.4541(c) and (d), the TEA will identify and select approved service providers through a RFQ process. Failure to adhere to established RFQ requirements and assurances will result in non-selection as a service provider.

(3) Notification. The TEA will notify each applicant in writing of its selection or non-selection as an approved service provider.

(4) Condition of operation. A school district designated as an approved service provider may not be reimbursed with Mathematics Instructional Coaches Pilot Program funds for providing coaching services to teachers employed by the district.

(5) Renewal or revocation for service provider.

(A) Each approved service provider must submit a renewal application every two years in order to maintain eligibility to participate in the Mathematics Instructional Coaches Pilot Program as an approved service provider.

(B) The commissioner may deny renewal of or revoke participation in the Mathematics Instructional Coaches Pilot Program for a service provider based on any of the following factors:

(i) noncompliance with requirements and assurances outlined in the RFQ and/or the provisions of this section and the TEC, §21.4541;

(ii) lack of program success as evidenced by required progress reports and program data;

(iii) failure to meet performance standards specified in the RFQ;

(iv) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the service provider and the pilot program; or

(v) refusal to serve participants in the Mathematics Instructional Coaches Pilot Program.

(C) A decision by the commissioner to deny renewal or revoke approval of a service provider is final and may not be appealed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2008.
TRD-200803022

Cristina De La Fuente-Valadez
Director, Policy Coordination Division
Texas Education Agency
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For further information, please call: (512) 475-1497



SUBCHAPTER HH. COMMISSIONER'S RULES CONCERNING THE TEXAS ADOLESCENT LITERACY ACADEMIES

19 TAC §102.1101

The Texas Education Agency (TEA) adopts new §102.1101, concerning attendance and completion requirements for Texas Adolescent Literacy Academies. The new section is adopted without changes to the proposed text as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3113). The adopted new rule implements the requirement of the Texas Education Code (TEC), §21.4551, that the commissioner of education by rule require a teacher to attend a reading academy if the teacher provides instruction in reading, mathematics, science, or social studies to students at the sixth, seventh, or eighth grade level at a campus that is issued a final accountability rating of *Academically Unacceptable* in reading.

In 1999, the 76th Texas Legislature enacted the Student Success Initiative, which established grade advancement requirements based on student performance on statewide assessments in reading and/or mathematics in Grades 3, 5, and 8. Students in Grade 3 were subject to the grade advancement requirement in reading beginning in school year 2002-2003. Students in Grade 5 were subject to the requirements in reading and mathematics beginning in school year 2004-2005. In order to provide teachers of these students with the most current research-based strategies in the teaching of reading, the legislature funded reading academies for teachers of students in Kindergarten-Grade 4. These teacher reading academies ended in 2003, after the development of the reading academy for Grade 4.

In 2007, the 80th Texas Legislature passed legislation that would address the academic performance differences of elementary students and students in Grades 6-8 on the state reading assessments. In addition, Grade 8 students are subject to the grade advancement requirements of the Student Success Initiative beginning with school year 2007-2008. The 80th Texas Legislature, through House Bill (HB) 2237, provided for the statewide implementation of adolescent literacy academies for teachers in Grades 6-8, beginning in the summer of 2008.

The Texas Adolescent Literacy Academies are intended to instruct English language arts and reading and content area teachers in successful, research-based strategies for improving students' academic literacy. The legislation also mandates that all teachers who provide instruction in reading, mathematics, science, or social studies to students in Grade 6, 7, or 8 at a campus issued an accountability rating of *Academically Unacceptable* must attend and complete the requirements of an English Language Arts or Content Area Academy.

Adopted new 19 TAC §102.1101 specifies the Texas Adolescent Literacy Academies and attendance and completion requirements for specific teachers. The new rule also defines which teachers must attend the academies, establishes an imple-

mentation schedule, addresses payment of stipends for eligible teachers, and requires school districts to maintain attendance and completion records.

To assist the TEA in implementing the new rule, the regional education service centers (ESCs) will maintain records of teachers who register and complete the training sessions in their ESC regions. The Vaughn Gross Center at The University of Texas at Austin will maintain a management system to verify participants' completion of the online follow-up sessions and provide the names to the appropriate ESCs. An outside evaluator will conduct evaluation activities, including developing an evaluation report to be submitted to the TEA.

The TEA determined that the adopted new section will have no direct adverse economic impact for small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began April 18, 2008, and ended May 18, 2008. No public comments were received.

The new section is adopted under the Texas Education Code, §21.4551, which authorizes the commissioner to by rule require a teacher to attend a reading academy if the teacher provides instruction in reading, mathematics, science, or social studies to students at the sixth, seventh, or eighth grade level at a campus that is considered academically unacceptable under Section 39.132 on the basis of student performance on the reading assessment instrument administered under Section 39.023(a) to students in any grade level at the campus.

The new section implements the Texas Education Code, §21.4551.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2008.

TRD-200803091

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §§213.27 - 213.30, 213.33

The Texas Board of Nursing (BON) adopts without changes amendments to 22 Texas Administrative Code §§213.27 - 213.30 and 213.33 pertaining to Practice and Procedure. These amendments were originally proposed and published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3723) and add language to the foregoing rules regarding the Board's Disciplinary Sanction Policies and its Disciplinary Guidelines for Criminal Conduct. The modified guidelines were published on March 9, 2007 in the *Texas Register* (32 TexReg 1409). These

policies were reviewed by the Board's Task Force on Eligibility and Discipline which is an advisory committee consisting of advocate and stakeholder groups representing nursing practice. The Board approved modifications to the Board's Eligibility and Disciplinary Sanction Policies pertaining to substance abuse/dependency, lying and falsification, sexual misconduct, and fraud, theft, and deception, and these were published on February 22, 2008 in the *Texas Register* (33 TexReg 1646). These policies and guidelines are referred to by the Staff and Board when determining appropriate decisions in eligibility and disciplinary matters and should, therefore, be included in the Board's rules. The purpose of these policies is to address issues that arise in eligibility and disciplinary matters under Texas Occupations Code §301.452(b) and rules §§213.27 - 213.30 and 213.33.

No comments were received in response to the proposal.

The adopted amendments are pursuant to the authority of Texas Occupations Code, §301.157 and §301.151, which authorize the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2008.

TRD-200803051

James W. Johnston

General Counsel

Texas Board of Nursing

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Proposal publication date: May 9, 2008

For further information, please call: (512) 305-6824



PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT SUBCHAPTER A. ETHICAL STANDARDS

22 TAC §663.11

The Texas Board of Professional Land Surveying (TBPLS) adopts the repeal of §663.11, concerning certification and monumentation of surveys, without changes to the proposal as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2901). This rule is currently under Professional and Technical Standards, §663.17, which concerns monumentation.

The adopted repeal of this rule is to remove wording that already exists in another rule.

No comments were received regarding the repeal of this rule.

The repeal is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2008.

TRD-200803040

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: July 1, 2008

Proposal publication date: April 11, 2008

For further information, please call: (512) 239-5263



SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.16

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.16, concerning Boundary Construction. The amendment is adopted with changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2901) and will be republished. This section identifies the requirements a registered professional land surveyor must follow in order to meet standards set up by the Board.

The amendment will further clarify what the land surveyor should do when delineating a property or boundary line. The changes made to the proposed rule text were to use the term land surveyor, which is defined in the Professional Land Surveying Practices Act, as opposed to surveyor which is not a defined term.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

§663.16. *Boundary Construction.*

(a) When delineating a property or boundary line as an integral portion of a survey, the land surveyor shall respect junior/senior property rights, footsteps of the original land surveyor, the record, the intent as evidenced by the record, the proper application of the rules of dignity or the priority of calls, and applicable statutory and case law of Texas.

(b) Appropriate deeds and/or other documents including those for adjoining parcels shall be relied upon for the location of the boundaries of the subject parcel(s).

(c) A land surveyor assuming the responsibility of performing a land survey also assumes the responsibility for such research of adequate thoroughness to support the determination of the location of intended boundaries of the land parcel surveyed. The land surveyor may rely on record data related to the determination of boundaries furnished for the registrants' use by a qualified provider, provided the registrant reasonably believes such data to be sufficient and notes, references, or credits the documentation by which it is furnished.

(d) All boundaries shall be connected to identifiable physical monuments related to corners of record dignity. In the absence of such monumentation the land surveyor's opinion of the boundary location shall be supported by other appropriate physical evidence which shall be explained in a land surveyor's report.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2008.

TRD-200803041

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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Proposal publication date: April 11, 2008

For further information, please call: (512) 239-5263



22 TAC §663.17

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.17, concerning monumentation, with changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2902) and will be republished. This section identifies the requirements a registered professional land surveyor must follow in regards to the setting of monuments.

The adopted amendment will further clarify what the land surveyor should do when setting monumentation. The changes made to the proposed rule text were to use the term land surveyor, which is defined in the Professional Land Surveying Practices Act, as opposed to surveyor which is not a defined term.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

§663.17. Monumentation.

(a) All monuments set by registered professional land surveyors shall be set at sufficient depth to retain a stable and distinctive location and be of sufficient size to withstand the deteriorating forces of nature and shall be of such material that in the land surveyor's judgment will best achieve this goal.

(b) When delineating a property or boundary line as an integral portion of a survey (survey being defined in the Act, §1071.002(6) or (8)), the land surveyor shall set, or leave as found, sufficient, stable and reasonably permanent survey markers to represent or reference the property or boundary corners, angle points, and points of curvature or tangency.

(1) All survey markers shall be shown and described with sufficient evidence of the location of such markers on the land surveyors' plat. If the land surveyor shall prepare a written description of the surveyed premise, he/she shall include in that written description:

(A) reference to and a description of the survey markers as shown on the plat; and

(B) the seal and signature of a registered or licensed land surveyor.

(2) In addition, the land surveyor may furnish an electronic copy of a written description provided that the text is verbatim to that on the certified document retained in the land surveyor's file.

(c) All metes and bounds description prepared for easements shall be tied to physical monuments of record related to the boundary of the affected tract. If the land surveyor chooses to monument the easement or is directed to do so by his/her client, such monumentation shall be in compliance with subsection (b) of this section.

(d) Where practical, all monuments set by Professional Land Surveyors to delineate or witness a boundary corner shall be marked in a way that is traceable to the responsible registrant or associated employer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 239-5263



22 TAC §663.19

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.19, concerning Plat/Description/Report. This section identifies what the registered land surveyor is required to include in surveying reports. The amendment is adopted with changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2902).

The amendment will further clarify the definition of what a report shall include. The changes made to the proposed rule text were to use the term land surveyor, which is defined in the Professional Land Surveying Practices Act, as opposed to surveyor which is not a defined term.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

§663.19. Plat/Description/Report.

For the purposes of these rules the word "report" shall mean any or all of the following survey plat, descriptions, or written narratives.

(1) All reports shall delineate the relationship between record monuments and the location of boundaries surveyed, such relationship shall be shown on the survey plat, if a plat is prepared, and/or separate report and recited in the description with the appropriate record references recited thereon and therein.

(2) Every description prepared for the purpose of defining boundaries shall provide a definite and unambiguous identification of the location of such boundaries and shall describe all pertinent monuments found or placed.

(3) Every survey plat prepared shall be to a convenient scale and shall provide a definite and unambiguous representation of the location of the surveyed land according to its record description. Where material discrepancies are found between the record and the

conditions discovered, the land surveyor shall apprise his/her client in the following manner.

(A) If a plat of survey is prepared, the land surveyor shall:

(i) make specific reference to the discrepancy on the plat of survey; or

(ii) make a general reference to the discrepancy on the plat of survey and a specific reference to a report of survey which more specifically describes the discrepancy.

(B) If a survey plat is not prepared, the land surveyor shall notify his/her client of any material discrepancy by report of survey or other written notice.

(4) Courses shall be referenced by notation upon the survey plat to an identifiable line for directional control.

(5) The survey plat shall bear the firm name, land surveyor's name, address, and phone number of the land surveyor responsible for the land survey, his/her official seal, his/her original signature (see §661.46 of this title (relating to Seal and Stamps)), and date surveyed.

(6) Boundary monuments found or placed by the land surveyor shall be described upon the survey plat, including those controlling monuments to which the survey may be referenced. The land surveyor shall note upon the survey plat which monuments were found and which monuments were placed as a result of his/her survey.

(7) A reference shall be cited on the plat to the record instrument that defines the location of adjoining boundaries. The cited instrument need not be the current ownership, but shall be the document containing the description of the boundaries being re-established.

(8) When appropriate, reference shall be cited in the prepared description to the record instrument that defines the location of adjoining boundaries. The cited instrument need not be the current ownership, but shall be the document containing the description of the boundaries being re-established.

(9) If any report consists of more than one part, each part shall note the existence of the other part or parts.

(10) If a land surveyor provides a written narrative in lieu of a Plat/sketch/drawing to report the results of a survey, the written narrative shall contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2008.

TRD-200803039

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: July 1, 2008

Proposal publication date: April 11, 2008

For further information, please call: (512) 239-5263



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 169. ZOONOSIS CONTROL

SUBCHAPTER B. CARE OF ANIMALS BY CIRCUSES, CARNIVALS, AND ZOOS

25 TAC §§169.41 - 169.48

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§169.41 - 169.48, concerning the care of animals by circuses, carnivals, and zoos. The amendments are adopted without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1988) and, therefore, will not be republished.

BACKGROUND AND PURPOSE

These rules are necessary to comply with Occupations Code, Chapter 2152, (formerly Health and Safety Code, Chapter 824), "Regulation of Circuses, Carnivals, and Zoos," §2152.051.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 169.41 - 169.48 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are mandated.

SECTION-BY-SECTION SUMMARY

The amendments to §§169.41 - 169.48 modify the language to make it more concise, update the definitions, add a statutory citation, revise the legacy agency names and department areas, and replace "director" with "manager" for the Zoonosis Control Branch.

The amendments to the sections update and clarify language to enable those subject to the sections to more readily comply. The amendments promote humane conditions for these animals and promote public health and safety.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, Chapter 2152, "Regulation of Circuses, Carnivals, and Zoos," §2152.051, which requires the adoption of rules to administer the chapter; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2008.

TRD-200803066

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: July 3, 2008

Proposal publication date: March 7, 2008

For further information, please call: (512) 458-7111 x6972



TITLE 28. INSURANCE

PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER B. OMBUDSMAN PROGRAM

28 TAC §276.11

The Office of Injured Employee Counsel (OIEC) adopts new §276.11 concerning the cost and time frame of obtaining copies of an injured employee's medical documentation for use by an Ombudsman in assisting the injured employee in the Texas Department of Insurance, Division of Workers' Compensation's (DWC) administrative dispute resolution system. Section 276.11 is necessary to implement Labor Code §404.155(e) pursuant to House Bill (HB) 888, 80th Texas Legislature, Regular Session, 2007. Section 276.11 is adopted with a change as proposed in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2528).

New §276.11 is necessary to fulfill OIEC's mission critical function to assist an injured employee in DWC's administrative dispute resolution system pursuant to Labor Code §§404.101. Access to an injured employee's medical documentation is imperative to adequately assist an injured employee during a medical dispute resolution hearing. HB 724 as passed by the 80th Texas Legislature, Regular Session, 2007, provides for an administrative hearing subsequent to an Independent Review Organization's (IRO) decision in DWC's medical dispute resolution system. OIEC's Ombudsmen are anticipated to assist a majority of injured employees in these medical dispute resolution hearings as a result of an attorney's limited ability to get reimbursed for services rendered on medical issues within the workers' compensation system. In claims where compensability is contested, health care providers will benefit from an Ombudsman's assistance to an injured employee in proving up a compensable injury. In these cases, a health care provider's payment for services is dependent on an Ombudsman's access to medical documentation. Access to an injured employee's medical documentation is imperative in disputed claims to an injured employee's access to necessary and appropriate medical care which would allow them to get well and back to work.

Section 276.11 is adopted as proposed with the exception of a nonsubstantive change that increases clarity for the reader: the term "prescribed" replaced "governed" in the second sentence of the section.

Adopted §276.11 states upon written request a health care provider shall provide the Office of Injured Employee Counsel (OIEC) medical documentation regarding an injured employee at no cost within five business days of the date posted on the request. A health care provider shall be reimbursed by the insurance carrier for the cost of the medical documentation as prescribed by Division of Workers' Compensation Rule 134.120. If either party fails to comply, an administrative violation shall be enforced by the Commissioner of Workers' Compensation.

Prior to proposing §276.11, an informal version of the rule was sent to the following stakeholders: Texas Department of Insurance; Division of Workers' Compensation; Texas Medical Association; Insurance Council of Texas; American Federal of Labor and Congress of Industrial Organizations; Texas Association of Business; Texas Mutual Insurance Company; Liberty Mutual; Texas Chiropractor Association; Association of Insurance Adjusters; Burns, Anderson Jury & Brenner L.L.P.; Flahive, Ogden & Latson, Attorneys at Law, P.C.; KSF Orthopedic Center; and various political subdivisions, employer, and injured employee representatives. OIEC contacted the above referenced organizations as suggested by the Texas Government Code, Chapter 2008, Negotiated Rulemaking Act. Numerous changes were made as a result of the feedback that was received to resolve potential issues and alleviate concerns.

OIEC received no public comments on this rulemaking initiative.

For: None

Against: None

Section 276.11 is adopted pursuant to Texas Labor Code §§404.155, 404.101, 404.151, and 404.106. Section 404.155 provides for the Public Counsel to adopt rules regarding a time frame for the provision of copies of an injured employee's medical documentation and any other matter relating to provision of those copies. Section 404.101 requires OIEC to assist injured employees, through the ombudsman program, in the DWC's administrative dispute resolution system. Section 404.151 requires an OIEC Ombudsman to assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system. Section 404.106 provides the Public Counsel rulemaking authority to adopt rules to implement Chapter 404 of the Texas Labor Code.

§276.11. Access to Injured Employee Medical Documentation.

Upon written request, a health care provider shall provide the Office of Injured Employee Counsel (OIEC) medical documentation regarding an injured employee within five (5) business days from the date posted on the request at no cost to OIEC. A health care provider's reimbursement from an insurance carrier for costs of documentation provided to OIEC are prescribed by the provisions of §134.120 of this title. A health care provider or insurance carrier that fails to comply with the requirements of this section commits an administrative violation. The Commissioner shall enforce a violation under this section in accordance with Chapter 415 of the Texas Labor Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 10, 2008.

TRD-200803008

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 61. DESIGN AND CONSTRUCTION SUBCHAPTER E. GUIDELINES FOR ADMINISTRATION OF TEXAS LOCAL PARKS, RECREATION, AND OPEN SPACE FUND PROGRAM

The Texas Parks and Wildlife Commission adopts the repeal of §61.132, amendments to §§61.133 - 61.136, and new §§61.132, 61.138, and 61.139, concerning Guidelines for Administration of Texas Local Parks, Recreation, and Open Space Fund Program. New §61.132 and the amendments to §61.133 and §61.134 are adopted with changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9551). The repeal of §61.132; amendments to §61.135 and §61.136; and new §61.138 and §61.139 are adopted without changes to the proposed text and will not be republished.

The change to §61.132, concerning Texas Local Park Grants Programs Manual, updates the phone number of the program.

The change to §61.133, concerning Grants for Outdoor Recreation Programs, alters subsection (b)(1) and (2) to clarify the requirement that a master plan be formally adopted by the sponsor's governing entity. The change also alters those provisions so that consistent language is used in both paragraphs in describing the action required and clarifies that by "plan" the department means a complete plan.

The change to §61.133 also alters subsection (c)(7)(B) to clarify terminology. As proposed, clause (ii) refers to "sports and playfields." In response to public comment, the department has created two categories, "sports fields and courts," and "playgrounds" in order to provide clearer delineations of the various types of recreational infrastructure for which grant assistance is available. The change also offers clarifying examples for clauses (iii) and (viii) to give a better idea of what each category entails.

The change to §61.134, concerning Grants for Indoor Recreation Programs, alters subsection (b)(1) and (2) to clarify the requirement that a master plan be formally adopted by the sponsor's governing entity. Additionally, the change also alters those provisions so that consistent language is used in both paragraphs in describing the action required and clarifies that by "plan" the department means a complete plan.

The amendments to §§61.132 - 61.136 implement modifications to existing programs. New §61.138, concerning Outdoor Urban Park Grants Program, and §61.139, concerning Indoor Urban Park Grants Program, implement the requirements of House Bill 12 (HB 12), §39, which amended the Parks and Wildlife Code,

Chapter 24, by adding new Subchapter B requiring the department to adopt rules and regulations for grant assistance to large county and municipality recreation and parks programs. The provisions of HB 12 authorize the department to make assistance grants and matching grants to large counties and municipalities, which are defined as "a county or municipality with a population of 500,000 or more." Additionally, HB 12 creates a special fund in the treasury and dedicates the fund to the award of the grants for large counties and municipalities.

In developing the amendments and new sections, the department held five hearings across the state, conducted an on-line survey, and hosted webcasts to solicit and encourage public comment. The amendments and new sections are consistent with the consensus of that public outreach effort.

The repeal of §61.132, concerning Texas Recreation and Parks Account Grants Manual, is necessary for the adoption by reference of an updated manual. The manual has been altered to be consistent with the changes adopted in this rulemaking.

New §61.132, concerning Texas Local Park Grants Programs Manual, adopts by reference the newest edition of the manual, which is now named the Texas Local Park Grants Programs Manual.

Current §§61.133 - 61.136 govern the process of application, review, and reward for four specific grants programs administered by the department. Section 61.133 governs grants for outdoor recreation programs; §61.134 governs grants for indoor recreation programs; §61.135 governs grants for community outreach outdoor programs; and §61.136 governs grants for small community grant programs. In general, the amendments and new sections implement identical or similar alterations to the grant process for each type of grant.

The amendment to §61.133, concerning Grants for Outdoor Recreation Programs, removes the program priority category for at-risk youth and redistributes the points from that category; creates a program priority category for the department's Land and Water Resources Conservation and Recreation Plan (Plan); alters the current scoring system by allowing for the award of priority points based on master planning and adjusts the remaining priority scoring weights accordingly; increases total point values for renovation while reducing point values for recreational elements vs. support elements; clarifies the types of recreation categories that may be addressed in the master plan; corrects a formula used to calculate priority points for elderly, minority, and low-income residents; creates a new definition of low-income status for purposes of determining service populations; replaces the current award criterion for "unique or significant natural resources" with an award criterion for "natural resources representative of the ecological characteristics of the region;" allows for scoring weight to be given to prospective acquisition, preservation, or management of projects based on acreage or quality; increases total points for acquisition projects; clarifies the award of priority points and increase the total available points for environmentally responsible activities; provides for reduction of points if the sponsor is not in compliance with current obligations with respect to existing awards; and provides for the automatic award of points for applications submitted by the deadlines established by the department.

Current §61.133(a) establishes a suite of priority criteria used by the department to evaluate and rank grant proposals for possible award. Subsection (a)(7) creates a priority criterion for low-income, minority, elderly, or at-risk youth populations. The amend-

ment eliminates the at-risk youth component of the criterion. The intent of the current rule is to assist in the development of parks and facilities that benefit specific populations. The department's concern is that it is unable to corroborate continued program activity after the completion of projects for which funds have been awarded. Additionally, the department finds that a qualitative definition of "at-risk youth" is problematic.

The amendment to §61.133(a) adds a new priority criterion to enable the department to consider a proposal's consistency with the Texas Parks and Wildlife's Plan as part of the evaluation process. The Plan is the core guidance document that drives all of the department's efforts in conservation, management, and recreation.

The amendment to §61.133(b)(2) clarifies that master plans may cover multiple jurisdictions.

The amendment to §61.133(b)(3) eliminates the current two-year standard for supplying summaries of plan updates and replaces it with a five-year standard. The department has determined that most planning activities done by local communities are on a five- or ten-year cycle. The amendment is necessary to make compliance more synchronous with the planning process.

Under the current rules, the department scores applications on the basis of priority points awarded for various discrete criteria tied to specific recreational opportunities and services. Due to the increasing needs of local communities for financial assistance in providing recreational opportunity, current funding levels are insufficient to award requested grants to all applicants. In reviewing the overall process, the department has determined that an increased emphasis on local planning is necessary to provide for the most effective delivery of program benefits to the citizens of the state. The amendment to subsection (c)(7)(A) therefore adjusts the current structure of the program by creating "planning points" to encourage and reward sound local planning for addressing recreational needs. In order to achieve this reconfiguration, the amendment replaces the current methodology of awarding points for individual priority needs with a variable weighting system that considers the aggregate number of priority needs identified in the sponsor's application and that are consistent with the applicant's master plan.

Current §61.133(c)(7)(B) addresses the provision of diverse park and recreation opportunities and facilities. The current rule is broadly worded. The department has determined that greater detail is needed to assist applicants in more precisely defining the opportunities and facilities for which funding assistance is sought, which will in turn provide the department with a clearer understanding of the exact nature of each applicant's request. Therefore, the amendment identifies 11 specific types of activities or facilities that must be identified either in the applicant's master plan or by means of a documented public input process (if the applicant does not have a master plan).

Current §61.133(c)(7)(D) addresses the geographic distribution or innovative use of parks and recreation lands and facilities within the sponsor's jurisdiction. As discussed previously, the department seeks to encourage and reward sound local planning. Accordingly, the amendment allows for the award of priority points under the criterion only if a prospective project has been identified in either in the applicant's master plan or by means of a documented public input process (if the applicant does not have a master plan).

Current §61.133(c)(7)(D)(i) and (ii) provide equations for determining point awards based on percentages of specific popula-

tions served by prospective projects. In order to be mathematically correct, the value obtained by the equation must be divided by 100 to yield a value that is weighted correctly. The amendment makes that correction.

Current §61.133(c)(7)(F) uses the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint as the determinant of low-income status for the purpose of identifying a prospective project's primary constituency. The amendment replaces the current standard by defining low-income status as "meeting any federal standard of eligibility for low-income status."

Current §61.133(c)(7)(H) addresses the award of points for the proposed acquisition of land that contains "unique or significant" natural resources. The department has determined that the current standard may be confusing. The intent of the provision is to recognize prospective acquisitions that would preserve natural resource value for public enjoyment. The qualification of "unique or significant" is not meant in an absolute context, but rather to indicate that a prospective acquisition is relevant in terms of its natural resource value. Therefore, the amendment replaces the phrase "unique or significant" with the phrase "natural resources representative of the ecological characteristics of the region" in order to more accurately indicate the department's purpose. Additionally, current §61.133(c)(7)(H)(i) and (ii) identify potential points awards for the acquisition of wetlands or areas that are otherwise vulnerable or contain rare, threatened, or endangered species. The department has determined that it is necessary to qualify the current rule to allow for evaluation on the basis of acreage or quality of the prospective acquisition. The intent of the amendment as adopted is to provide for comparison of competing applications in order to rank them in terms of the overall conservation and recreation benefits offered. For example, a very small parcel of land might have a high specific conservation value with respect to specific features, but another project might preserve more natural resource value in general because of its size. The amendment is intended to acknowledge that such considerations will be factored into the process of awarding points.

Current §61.133(c)(7)(J) addresses the extent which a prospective project will promote environmentally responsible activities and development, such as native landscaping, energy efficiency, or recycling. Rather than award points based on each of the elements listed in an application, the department has determined that it is more effective to award points based on the overall ecological diversity, innovation, and cost of the prospective project. The amendment is intended to result in the evaluation of prospective projects on a qualitative rather than quantitative basis.

Current §61.133(c)(7)(K) addresses projects that provide significant linkages between existing parks or facilities. The amendment clarifies the department's intent to encourage ecologically friendly linkages, such as trails and green corridors, rather than physical infrastructure, and increases the potential total score by five points.

The department occasionally receives applications for project funding from sponsors that have not complied with the obligations of previous grant awards. In order to ensure that the public receives the highest return on the limited funds available, the amendment adds new subsection (c)(7)(N) to allow the department to deduct up to five points from the score of projects that are received from sponsors that are non-compliant with existing obligations.

The department establishes informal deadlines for receipt of applications. Occasionally, problems arise as a result of the receipt of applications that although received by the deadline or are incomplete and therefore cause the diversion of administrative effort to remedy. The department understands that many communities, particularly small communities, do not have the staff or the expertise to negotiate the process perfectly, so rather than create a standard that would eliminate or penalize deserving projects, the department chooses to allow up to five points to projects for which a complete application was received by the deadline. The provision is intended to provide an incentive for applicants to contact the department for assistance in advance of deadlines.

The amendment to §61.134, concerning Grants for Indoor Recreation Programs, implements most of the changes that were made to §61.133, and for the same reasons contained in the discussion of that section. The changes that the amendment to §61.134 shares with §61.133: remove award priority for at-risk youth and redistribute points to the remaining priority categories; allow a longer time period for submission of master plan updates and for the consideration of multi-jurisdictional plans; create a generic definition of low-income for purposes of determining service populations; create a program priority category for the department's Plan; alter the current scoring system by allowing for the award of priority points based on master planning and adjusting the remaining priority scoring weights accordingly; increase total point values for renovation while reducing point values for recreational elements (correct a formula used to calculate priority points for elderly, minority, and low-income residents); clarify the award of priority points and increase the total available points for environmentally responsible activities; provide for reduction of points if the sponsor is not in compliance with current obligations with respect to existing awards; and provide for the automatic award of points for applications submitted by the deadlines established by the department.

The amendment to §61.135, concerning Grants for Community Outdoor Outreach Programs, replaces the current standard for determining low-income status, requires greater detail from sponsors for prospective projects serving youth and physically/mentally challenged populations, clarifies the award of points for projects that encourage partnerships with organized groups, clarifies requirements for projects involving department facilities and programs, requires quantification of service populations for at-risk youth and educational projects, and implements a new category of program award to address projects that include outdoor service projects.

Current §61.135(b)(5)(A)(v) uses the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint as the determinant of low-income status for the purpose of identifying a prospective project's primary constituency. There are various federal definitions of low-income standards. The amendment replaces the current standard by defining low-income status as "meeting any federal standard of eligibility for low-income status."

Current §61.135(b)(5)(A)(i) and (ii) allow for the award of points for projects that identify physically/mentally challenged or youth populations as a project's primary constituency. The department seeks more detailed information from applicants in order to more carefully evaluate prospective project awards. Therefore, the amendment requires applicants to quantify the population to be served.

Current §61.135(b)(5)(B) requires the submission of signed agreements between the project sponsor and the proposed partnership group. The amendment as adopted eliminates that requirement and instead allows the submission of partnership letters from the partnering organization stating what the partners are providing and the value of the contribution. The amendment is necessary to establish the elements needed by the department to determine which proposals are more competitive than others in terms of overall value.

Current §61.135(b)(5)(F) addresses proposed projects that would involve department programs or facilities. Although the current rule provides for the award of one point per department facility used, department staff used, or department program provided, the department wishes to clarify that such facilities, personnel, and programs must be named, identified, or confirmed. The amendment accomplishes that goal.

Current §61.135(b)(5)(G) addresses projects specifically targeting at-risk youth. The amendment requires sponsors to provide more detail about the demographics of the client base the project would serve, as well as more detailed descriptions of the exact types of activities to be funded.

Current §61.135(b)(5)(I) addresses outdoor educational activities. The current rule requires applicants to submit a discussion of the curriculum to be employed in the project in order to receive points for potential award. The department has determined that it would be more helpful and productive to analyze and compare outdoor education projects on the basis of goals and objectives. Therefore, the amendment eliminates the requirement for a discussion of curriculum and replaces it with a requirement for discussion of goals and objectives with respect to outdoor recreation and environmental education programs delivered to a service population.

The amendment to §61.135 also creates new subsection (b)(5)(J), which creates a point category for outdoor service projects. The department has determined that many projects undertaken as service projects by groups such as the Boy Scouts are consonant with the department's mission and should be eligible for assistance. The new provision requires the applicant to identify a specific project related to the department's mission, how the project will address a specific need or needs, how youth will be involved in the project, and how the project's impact will be evaluated. The provision also requires the applicant to present a partnership letter from the beneficiary of the project.

The amendment to §61.136, concerning Grants for Small Community Grant Programs, eliminates a priority category for recreational diversity; removes the program priority category for at-risk youth and redistributes the points from that category; creates a program priority category for the department's Plan; increases the maximum population threshold for additional points that could be awarded to very small communities; removes the priority category for at-risk youth; requires documented public input for projects that would create recreational opportunity for the elderly; alters the scoring methodology for projects proposing to promote environmentally responsible activities; creates a program priority category for the department's Plan; provides for reduction of points if the sponsor is not in compliance with current obligations with respect to existing awards; and provides for the automatic award of points for complete applications.

The amendment to §61.136 eliminates current subsection (a)(3), which creates a priority category for projects that would increase

recreational diversity. The department has determined that due to the small size of communities eligible for small community grants, all projects by default contribute to the diversity of recreation opportunity in such communities. Therefore, the current provision is unnecessary.

Current §61.136(a)(6) establishes a suite of priority criteria used by the department to evaluate and rank grant proposals for possible award. Subsection (a)(6) creates a priority criterion for low-income, minority, elderly, or at-risk youth populations. The amendment eliminates the at-risk youth component of the criterion. The intent of the current rule is to assist in the development of parks and facilities that benefit specific populations. The department's concern is that it is unable to corroborate continued program activity after the completion of projects for which funds have been awarded. Additionally, the department finds that a qualitative definition of "at-risk youth" is problematic.

The amendment to §61.136 adds a new priority criterion to enable the department to consider a proposal's consistency with the Plan as part of the evaluation process. The Plan is the core guidance document that drives all of the department's efforts in conservation, management, and recreation.

The amendment to §61.136 alters the maximum population requirements for eligibility for points under the provisions of subsection (b)(7), increasing it from 2,000 persons to 2,500 persons. This element of the small community grants program is intended to serve very small communities. The department has determined that a slight increase in the maximum population ceiling would allow the program to be accessible by more communities.

Current §61.136(b)(7)(D) uses the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint as the determinant of low-income status for the purpose of identifying a prospective project's primary constituency. There are various federal definitions of low-income standards. The amendment replaces the current standard by defining low-income status as "meeting any federal standard of eligibility for low-income status as median income or lower."

Current §61.136(c)(7)(H) addresses the extent which a prospective project will promote environmentally responsible activities and development, such as native landscaping, energy efficiency, and recycling. Rather than award points based on each of the elements listed in an application, the department has determined that it would be more effective to award points based on the overall ecological diversity, innovation, and cost of the prospective project. The amendment is intended to result in the evaluation of prospective projects on a qualitative rather than quantitative basis.

The department occasionally receives applications for project funding from sponsors that have not complied with the obligations of previous grant awards. In order to ensure that the public receives the highest return on the limited funds available, the amendment adds new subsection (b)(7)(I) to allow the department to deduct up to five points from the score of projects that are received from sponsors that are non-compliant with existing obligations.

The department establishes informal deadlines for receipt of applications. Occasionally, problems arise as a result of the receipt of applications that although received by the deadline, are incomplete and therefore cause the diversion of administrative effort to remedy. The department understands that many communities, particularly small communities, do not have the staff or the expertise to negotiate the process perfectly, so rather than create

a standard that would eliminate or penalize deserving projects, the department chooses to allow up to five points to projects for which a complete application was received by the deadline.

New §61.138, concerning Outdoor Urban Park Grants Program, creates rules for conservation and recreation grant assistance for large counties and municipalities as authorized under HB 12, §39, which amended Parks and Wildlife Code, Chapter 24, by adding new Subchapter B, which requires the department make grants to large counties or municipalities to provide one-half of the costs of the planning, acquisition, or development of a park, recreational area or open space area to be owned and operated by the county or municipality. New Subchapter B also requires the department to make grants to large counties, municipalities, or non-profit corporations for recreation, conservation, or education programs for underserved populations to encourage and implement increased access to and use of parks, recreational areas, cultural resource sites or areas, and open space areas by underserved populations.

The department's existing grants programs are segmented in order to acknowledge two broadly different areas of recreational need: indoor and outdoor. Within each of those categories, the department identifies a suite of recreation need categories, which potential grantees use to create directed proposals requesting grant assistance for specific purposes. In implementing the legislative directives of HB 12, the department retains the segmentation model by creating Outdoor and Indoor grant application and scoring processes for large counties and municipalities. The department conducted extensive outreach activities to the six cities and seven counties that meet the statutory requirements for eligibility for grant assistance under the terms of HB 12. Those outreach and consultation activities serve as the basis of the department's identification of the priority needs represented in the scoring system set forth in the new section.

New §61.138(a) sets forth the purpose and priorities of the Outdoor Urban Park Grants Program, establishes the methodology for competitive selection, and stipulates that funding is contingent on the availability of funds. The Project Priority Scoring System established in the section is necessary because the department receives more applications for worthy projects than it can fund. Since not all projects can be funded, it is necessary to create a uniform scoring system for evaluating and ranking projects in order to award grant funding to the most deserving projects.

New §61.138(b) stipulates that a proposal will not be considered by the commission more than twice unless it has been altered to raise its score. The provision is necessary to encourage local communities to be innovative and proactive in planning and pursuing grant assistance and to enable the department and the commission to eliminate proposals that have not been deemed competitive after multiple considerations in essentially the same form.

New §61.138(c) sets forth requirements related to the sponsor's local master plan on file with the department. Minimum master plan standards must be met to qualify for priority points, but a master plan would not be required to apply for grant assistance. The provision requires a local master plan to be on file with the department at least 60 days prior to the submission of a grant application, which is necessary to give the department adequate time to analyze and if necessary, work with the prospective sponsor to edit the plan. The provision requires plans to be formally adopted or endorsed by the applicable governing body of the sponsor and be jurisdiction-wide in scope, which is necessary to

ensure that plans are consistent with local authority and apply to the entirety of a jurisdiction or jurisdictions. Plans must also specifically identify the time period within which the goals and objectives are to be met, and are required to cover a 10-year period. Additionally, the provision stipulates that if a plan is more than five years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Plans older than 10 years will be considered obsolete and new plans will be required. In general the provisions are necessary to encourage local communities to engage in sensible planning in order to enable the department to maximize the efficiency and benefit of the grants assistance program.

New §61.138(d) sets forth 13 broad categories and subsidiary elements of each that the department considers to be significant indicators of the worthiness of a project proposal. The categories are acquisition, development, restoration, trails/corridors/greenways, sports facilities, underserved populations, joint ventures/partnerships, master plan, threat, consistency with the department's Land and Water Conservation Plan, compliance, urban biologist consultation, and historical/cultural resources.

New §61.138(d)(1) sets forth the elements used to evaluate a proposal's merit with respect to the acquisition of land. The department will award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to conservation and recreation in urban areas. Open space is critical for parks and recreation in the environment, serving as wildlife habitat, demonstration areas, aesthetic buffers, and places that the public can enjoy nature or outdoor-related recreation. In general, the department will award points to projects on the basis of the project's contemplation of acquisition of open space, trails and green corridors (including those that connect parkland), additions to existing parkland, recreation facilities related to natural resource enjoyment, and adaptive reuse of land, all within the context of utility and significance in the urban environment.

New §61.138(d)(2) sets forth the elements used to evaluate a proposal's merit with respect to the development of conservation and recreation opportunity. The department will award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to conservation and recreation in urban areas. The acquisition of land for parks and recreation is important, but equally important is how land is developed for parks and recreation use. In general, the department will award points to projects on the basis of the project's contemplation, within the context of utility and significance in the urban environment, of neighborhood parks, nature centers, regional park and conservation areas, green construction, multi-purpose facilities, and outdoor aquatic recreation.

New §61.138(d)(3) sets forth the elements used to evaluate a proposal's merit with respect to the restoration of parks and recreation infrastructure that is no longer used for its intended or original purpose. Many urban areas in the state contain infrastructure that, while no longer usable for original purposes, are by virtue of location, size, or features valuable as parks and recreation assets. The department will award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to conservation and recreation in urban areas. In general, the department will award points to projects on the basis of the project's contemplation, within the context of utility and significance in the urban environ-

ment, of neighborhood parks, nature centers, regional park and conservation areas, green construction, multi-purpose facilities, and outdoor aquatic recreation.

New §61.138(d)(4) sets forth the elements used to evaluate a proposal's merit with respect to the creation or enhancement of trails, corridors, and greenways. Since space is at a premium in urban areas, small-footprint projects such as a trail that connects parks or corridors and greenways can provide recreational opportunity while protecting watersheds, offering habitat for urban wildlife, or providing aesthetic buffers. The department will award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to such considerations.

New §61.138(d)(5) sets forth the elements used to evaluate a proposal's merit with respect to the provision of sport facilities. The recreational needs of urban areas include outdoor recreation activities such as sports. With land at a premium, the creation or enhancement of ball fields and other outdoor facilities is important. The department will award points based on the extent to which a proposed project contemplates large facilities dedicated to outdoor sports.

New §61.138(d)(6) sets forth the elements used to evaluate a proposal's merit with respect to the benefits the project would afford to underserved populations, such as of low-income, minority, or elderly citizens. The department will award points based on the extent to which a proposed project would create or enhance recreational opportunities, on the basis of demographic analysis, and in the case of elderly, stated as an identified need in their master plan or through an alternative public input process in those urban areas where there are demonstrably few or insufficient recreational opportunities for underserved populations.

New §61.138(d)(7) sets forth the elements used to evaluate a proposal's merit with respect to joint ventures and partnerships. Many urban areas consist of multiple political jurisdictions that share goals and needs, and it is often more efficient for such entities to pool finances and administration to maximize the delivery of recreation to constituents. Similarly, there are many non-profit and advocacy groups with an interest in parks and recreation issues. Therefore, the department will award points based on the extent to which a project involves such multi-organizational cooperation. The provision allows all partners to be considered, not just those making financial commitments, and weights the award of points based on the number of cooperators involved. The provision also requires binding documentation of the nature of the degree of commitment by each cooperator in order to preserve project integrity, and excludes partnerships restricted to program provision, which is necessary because the purpose of the grant program is not to provide programs, but to provide facilities and space for outdoor recreation activities.

New §61.138(d)(8) articulates requirements related to master planning activities. The department has determined that the efficacy of the creation, delivery, and enhancement of outdoor recreational opportunity is positively correlated to effective planning on the part of local communities. To encourage good planning, the department will award points to projects whose sponsor has submitted a locally adopted and department-approved master plan, and to the extent that a proposed project is consistent with that plan.

New §61.138(d)(9) establishes criteria for awarding points to proposals on the basis of the immediate necessity of award in order to prevent the loss of recreational opportunity. Urban en-

vironments are characterized by highly fluid, time-sensitive real estate environments in which the window of opportunity to acquire land or property of conservation, park, or recreational value is momentary. To acknowledge this, the provision will award points based on the exigency of time.

New §61.138(d)(10) sets forth the elements used to evaluate a proposal's merit with respect to the project's value as a cultural or historical resource. Urban areas often contain sites or features of significant cultural or historical import that inform and reflect the character and identity of the area. The provision recognizes that such sites or features are appropriate for park or recreational use.

New §61.138(d)(11) awards points for a proposal's consistency with the department's Plan. The Plan is the core guidance document that drives all of the department's efforts in conservation, management, and recreation. The department believes that proposed projects that are consistent with or in furtherance of the Plan should receive credit for doing so.

New §61.138(d)(12) is an administrative provision that allows the department to penalize sponsors that are not in compliance with the obligations of existing grant agreements and to reward the punctual submission of project proposals. The department believes that sponsors who for whatever reason are in demonstrable noncompliance with the obligations of existing or previous agreements should receive a reduced level of consideration for subsequent proposals. As the administrator of the grants assistance program, the department is responsible for ensuring that the public is served in the most efficient and effective manner possible. Therefore, the provision allows for the deduction of five points for any proposal submitted by a sponsor that in the department's view is in noncompliance. Additionally, the department establishes informal deadlines for receipt of applications. Occasionally, problems arise as a result of the receipt of applications that although received by the deadline, are incomplete and therefore cause the diversion of administrative effort to remedy. The department understands that many communities do not have the staff or the expertise to negotiate the process perfectly, so rather than create a standard that would eliminate or penalize deserving projects, the department chooses to allow up to five points to projects for which a complete application was received by the deadline. The provision is intended to provide an incentive for applicants to contact the department for assistance in advance of deadlines.

New §61.138(d)(13) awards points for projects if the sponsor has consulted with and received an assessment from the department's urban biology program at least 30 days prior to the application deadline. The department's urban biology program was established to provide biological support and expertise to the public on the management and conservation of environmental resources in urban environments. The provision offers a limited point award in order to provide an incentive for sponsors to consider a project's consistency with the efforts of the urban biology program.

New §61.139, concerning Indoor Urban Park Grants Program, establishes scoring system priorities for proposed indoor projects that are much the same as those adopted for outdoor projects. The new section sets forth 10 broad categories, and subsidiary elements of each, that the department considers to be significant indicators of the worthiness of a project proposal. The categories are: development, restoration, underserved populations, joint ventures/partnerships, master plan, threat, consistency with the department's Land and Water Conser-

vation Plan, compliance, urban biologist consultation, and historical/cultural resources.

New §61.139(a) sets forth the purpose and priorities of the Indoor Urban Park Grants Program, establishes the methodology for competitive selection, and stipulates that funding is contingent on the availability of funds. The Project Priority Scoring System established in the section is necessary because the department receives more applications for worthy projects than it can fund. Since not all projects can be funded, it is necessary to create a uniform scoring system for evaluating and ranking projects in order to award grant funding to the most deserving projects.

New §61.139(b) stipulates that a proposal will not be considered by the commission more than twice unless it has been altered to raise its score. The provision is necessary to encourage local communities to be innovative and proactive in planning and pursuing grant assistance and to enable the department and the commission to eliminate proposals that have not been deemed competitive after multiple considerations in essentially the same form.

New §61.139(c) sets forth requirements related to the sponsor's local master plan on file with the department. Minimum master plan standards must be met to qualify for priority points, but a master plan would not be required to apply for grant assistance. The new provision requires a local master plan to be on file with the department at least 60 days prior to the submission of a grant application, which is necessary to give the department adequate time to analyze and if necessary, work with the prospective sponsor to edit the plan. The provision requires that a plan be formally adopted or endorsed by official act of the applicable governing body of the sponsor, and that it be jurisdiction-wide in scope, which is necessary to ensure that the plan is consistent with local authority and applies to the entirety of a jurisdiction or jurisdictions. The plan must also specifically identify the time period within which the goals and objectives of the plan are to be carried out, and are required to cover a 10-year period. Additionally, the provision stipulates that if a plan is more than five years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Plans older than 10 years will be considered obsolete and new plans will be required. In general the provisions are necessary to encourage local communities to engage in sensible planning in order to enable the department to maximize the efficiency and benefit of the grants assistance program.

New §61.139(d)(1) sets forth the elements used to evaluate a proposal's merit with respect to the development of recreation opportunity. The department will award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to recreation in urban areas. In general, the department will award points to projects on the basis of the project's contemplation, within the context of utility and significance in the urban environment, of neighborhood parks, nature centers, regional parks, green construction, and multi-purpose facilities.

New §61.139(d)(2) sets forth the elements used to evaluate a proposal's merit with respect to the restoration of conservation and recreation infrastructure that is no longer used for its intended or original purpose. Many urban areas in the state contain infrastructure that, while no longer usable for the original purpose is, by virtue of location, size, or features, valuable as

parks and recreation assets. The department will award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to conservation and recreation in urban areas. In general, the department will award points to projects on the basis of the project's contemplation, within the context of utility and significance in the urban environment, of restoration and adaptive reuse of existing infrastructure. The provision would specifically prohibit grant assistance for basic maintenance, because the intent of the department is to assist in the restoration and enhancement of facilities, rather than maintenance.

New §61.139(d)(3) sets forth the elements used to evaluate a proposal's merit with respect to the benefits the project would afford to underserved populations, such as of low-income, minority, or elderly citizens. The department will award points based on the extent to which a proposed project would create or enhance recreational opportunities, on the basis of demographic analysis, in those urban areas where there are demonstrably few or insufficient recreational opportunities for underserved populations.

New §61.139(d)(4) sets forth the elements used to evaluate a proposal's merit with respect to joint ventures and partnerships. Many urban areas consist of multiple political jurisdictions that share goals and needs, and it is often more efficient for such entities to pool finances and administration to maximize the delivery of recreation to constituents. Similarly, there are many non-profit and advocacy groups with an interest in parks and recreation issues. Therefore, the department would award points based on the extent to which a project involves such multi-organizational cooperation. The provision allows the department to consider all partners, not just those making financial commitments, and weights the award of points based on the number of cooperators involved. The provision also requires binding documentation of the nature of the degree of commitment by each cooperator in order to preserve project integrity, and excludes partnerships restricted to program provision, which is necessary because the purpose of the grant program is not to provide programs, but to provide facilities and space for indoor recreation activities.

New §61.139(d)(5) articulates requirements related to master planning activities. The department has determined that the efficacy of the creation, delivery, and enhancement of indoor recreational opportunity is positively correlated to effective planning on the part of local communities. To encourage good planning, the department will award points to projects whose sponsor has submitted a locally adopted and department-approved master plan, and to the extent that a proposed project is consistent with that plan.

New §61.139(d)(6) establishes criteria for awarding points to proposals on the basis of the immediate necessity of award in order to prevent the loss of recreational opportunity. Urban environments are characterized by highly fluid, time-sensitive real estate environments in which the window of opportunity to acquire land or property of conservation, park, or recreational value is momentary. To acknowledge this, the provision allows the award of points based on the exigency of time.

New §61.139(d)(7) sets forth the elements used to evaluate a proposal's merit with respect to the project's value as a cultural or historical resource. Urban areas often contain sites or features of significant cultural or historical import that inform the character and identity of the area. The provision recognizes that such sites or features are appropriate for park or recreational use.

New §61.139(d)(8) allows the award of points for a proposal's consistency with the department's Plan. The Plan is the core guidance document that drives all of the department's efforts in conservation, management, and recreation. The department believes that proposed projects that are consistent with or in furtherance of the Plan should receive credit.

New §61.139(d)(9) is an administrative provision that allows the department to penalize sponsors that are not in compliance with the obligations of existing grant agreements and to reward the punctual submission of project proposals. The department believes that sponsors who for whatever reason are in demonstrable noncompliance with the obligations of existing or previous agreements should receive a reduced level of consideration for subsequent proposals. As the administrator of the grants assistance program, the department is responsible for ensuring that the public is served in the most efficient and effective manner possible. Therefore, the provision allows for the deduction of five points for any proposal submitted by a sponsor that in the department's view is in noncompliance. Additionally, the department establishes informal deadlines for receipt of applications. Occasionally, problems arise as a result of the receipt of applications that although received by the deadline, are incomplete and therefore cause the diversion of administrative effort to remedy. The department understands that many communities do not have the staff or the expertise to negotiate the process perfectly, so rather than create a standard that would eliminate or penalize deserving projects, the department chooses to allow up to five points to projects for which a complete application was received by the deadline. The provision is intended to provide an incentive for applicants to contact the department for assistance in advance of deadlines.

New §61.139(d)(10) allows the award of points for projects if the sponsor has consulted with and received an assessment from the department's urban biology program at least 30 days prior to the application deadline. The department's urban biology program was established to provide biological support and expertise to the public on the management and conservation of environmental resources in urban environments. The provision offers a limited point award in order to provide an incentive for sponsors to consider a project's consistency with the efforts of the urban biology program.

The rules as adopted will function by providing a uniform method for the submission, analysis, comparison, and ranking of competitive grant applications submitted by local communities seeking parks and recreation funding assistance from the department.

The department received one comment opposing adoption of the proposed rules. The commenter stated that the department seemed to have placed loopholes in the decision-making process that can be abused. The commenter also stated that parties that have problems in filling out forms should be helped and that the department should explain why the certification by legal counsel was required. The commenter also stated that the 10-year plan duration overlooks the current needs of the population, that local communities should have a voice in the process, and that they should have to pick up the costs for that participation. The department disagrees with the comment and responds that the Project Priority Scoring System model is necessary because the department receives more applications for worthy projects than it can fund. Since not all projects can be funded, it is necessary to create a uniform scoring system for evaluating and ranking projects in order to award grant

funding to the most deserving projects. The scoring system reflects the numerous inputs that are necessary to completely assess the public recreational value of project proposals. The department works closely with all prospective applicants to provide guidance, support, and assistance in the development of grant applications. Under the provisions of Government Code, §2001.024, the notice of a proposed rule must include a certification that the proposed rule has been reviewed by legal counsel and found to be within the state agency's authority to adopt. The department believes that the 10-year plan duration is adequate, since it was suggested to the department by local communities during the department's exhaustive outreach effort in the development of the rules. No changes were made as a result of the comments.

The department received three comments supporting adoption of the proposed rules.

No groups or associations commented on the proposed rules.

31 TAC §61.132

The repeal is adopted under Parks and Wildlife Code, Chapter 24, which requires the department to adopt regulations for grant assistance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2008.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



31 TAC §§61.132 - 61.136, 61.138, 61.139

The amendments and new sections are adopted under Parks and Wildlife Code, Chapter 24, which requires the department to adopt regulations for grant assistance.

§61.132. *Texas Local Park Grants Programs Manual.*

(a) The Texas Local Park Grants Programs Manual contains the standards and requirements for the application, evaluation and award of all grants made under this subchapter.

(b) The Texas Local Park Grants Programs Manual is adopted by reference and may be obtained by contacting the Texas Parks and Wildlife Department at 4200 Smith School Road, Austin, Texas 78744; (512) 389-8224; or at rec.grants@tpwd.state.tx.us.

§61.133. *Grants for Outdoor Recreation Programs.*

(a) Program purpose and priorities. All grant applications submitted to the department for outdoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. In general, recommended priorities for outdoor recreation projects are:

- (1) to ensure sponsor performance on active grants and compliance at previously assisted grant sites;
- (2) to recognize and reward local planning;

- (3) to increase recreational diversity;
- (4) to provide water-related park and recreation opportunities;
- (5) to improve geographic distribution and innovative use of park and recreation opportunities;
- (6) to maximize the use of funds for basic park and recreation opportunities;
- (7) to improve park and recreation opportunities for low income, minority, and elderly citizens;
- (8) to reward cooperative efforts between project sponsors and other entities;
- (9) to preserve significant natural resources through public land acquisition and stewardship;
- (10) to renovate existing, obsolete park and recreation areas and facilities;
- (11) to promote environmentally responsible activities and development;
- (12) to provide linear greenbelt linkages to parks, neighborhoods, or public facilities;
- (13) to encourage the appreciation and preservation of cultural resources; and
- (14) to support the department's Land and Water Resources Conservation and Recreation Plan.

(b) Local master plan standard requirements. Minimum master plan standards must be met to qualify for planning and priority points. Local sponsors may submit applications without having a department-approved master plan; however, only those sponsors that have a TPWD approved park, recreation and open space master plan will receive points for completing a local plan. In addition, only proposals that address priority needs identified in approved plans will receive priority points under the provisions of subsection (c)(7) of this section. Master plans must have been received in an approvable format at least 60 days prior to the application submission deadline at which time credit is sought. The following are minimum master plan standards:

- (1) Proof of adoption. The plan must be formally adopted or otherwise endorsed by act or resolution of the applicable governing body of the sponsor, and the endorsement must be included with the document.
- (2) Jurisdiction-wide scope. The plan must be complete, comprehensive, and assess the entire jurisdiction area of the project sponsor. County plans must cover the entire county, and city or district plans must cover the entire city or district. For large urban areas, the plan should cover the entire jurisdiction, and then may break the jurisdiction down into regions, sectors, precincts, districts, etc., as appropriate. Master plans that contemplate service delivery across more than one jurisdiction may be submitted by a local sponsor, with any necessary supplemental information, provided the plan has been formally adopted or otherwise endorsed by act or resolution of the applicable governing body of the sponsor.
- (3) Plan duration. The plan must specifically identify the time period within which the goals and objectives of the plan are to be carried out. Plans should cover a minimum ten-year period. If a plan is more than five years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Any revision of priorities

other than an update of accomplishments must present a new priority listing justified by additional public input. Plans older than 10 years will be considered obsolete and new plans will be required.

(4) Plan content. The following information should be included in the document:

(A) introduction;

(B) goals and objectives;

(C) plan development process (discuss when the planning process began, plan phases, public input received, survey/studies conducted, committees and/or personnel involved, etc.);

(D) area/facility concepts and standards, including:

(i) population/area service and acreage goals;

(ii) "typical" park and facility standards; and

(iii) applicable local codes, ordinances, and other requirements for community or neighborhood development.

(E) inventory of existing park, recreation and open space areas and facilities (including schools).

(F) needs assessment and identification. Information under this subparagraph shall be area- and facility-specific, and may include basic support facilities/infrastructure which are critical to the recreational experience. A discussion and identification of open space needs in the master plan, or a separate open space plan, shall be included.

(G) prioritization of needs. Applicant shall include:

(i) priority lists for outdoor and indoor needs (may be separate or combined);

(ii) if necessary, a map of all specific area(s) intended for open space acquisition and preservation, identified as a need, discussed, and prioritized, if desired;

(iii) where appropriate, a discussion of renovation/redevelopment needs, which may be ranked as a priority; and

(iv) plan implementation recommendations, including a timeline and discussion of resources for meeting priorities (which must identify and prioritize which needs are to be met, where, and when). Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input.

(H) illustrations, maps, charts, surveys, etc.

(c) Outdoor recreation project priority scoring system.

(1) Outdoor recreation projects presented to the commission shall be scored according to the criteria, rating factors, and point values set forth in this subsection.

(2) The priority ranking of a project will depend on its score in relation to the scores of other projects under consideration.

(3) Funding of projects will depend on the availability of TRPA funds.

(4) Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the sponsor and not accepted for resubmission.

(5) Each site of a multiple-site project shall be scored individually. Individual site scores will be weighted on a pro-rata share

of the total budget for the entire project. All weighted scores will be added together for the total project score.

(6) If the sponsor is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, the application will be scored and presented for award consideration. If the sponsor does not meet the requirements of this paragraph, the application will not be scored or considered further.

(7) A project proposal meeting the requirements of paragraph (6) of this subsection shall be evaluated according to the extent that:

(A) the sponsor has a current department-approved master plan on file at the time of application and the project will satisfy the priority outdoor recreation needs identified in the master plan required by this subparagraph. Consideration of "need" for this criterion includes basic support facilities/infrastructure critical to the park and recreation experience. Eligible support facilities/infrastructure are limited to restrooms, roads and parking, area lighting (to ensure public safety), utilities essential to eligible support facilities, irrigation, and land acquisition. Scoring shall be as follows, up to a total of 15 points:

(i) for having a current department-approved master plan on file at the time of application submission - 5 points;

(ii) for satisfying 3 of the top 3 priority needs - 10 points;

(iii) for satisfying 2 of the top 3 priority needs - 6 points; and

(iv) for satisfying 1 of the top 3 priority needs - 3 points.

(B) the project will provide diversity of park and recreation opportunities/facilities. Priority points for this criterion shall be awarded based on the number of park and recreation opportunities/facilities provided within the intended service area. One point will be awarded for each type of significant recreation category listed in this subparagraph, provided each element is specifically identified in a locally adopted park, recreation and open space master plan or, if the sponsor does not have an adopted master plan, by a documented public input process, up to a total of 10 points. The significant recreation categories are:

(i) campgrounds;

(ii) sports fields and courts;

(iii) playgrounds (tables, pavilions, etc.);

(iv) picnic areas;

(v) golf courses;

(vi) swimming facilities;

(vii) trails;

(viii) passive recreation (scenic overlooks, gardens, etc.);

(ix) amphitheater;

(x) fishing/hunting facilities; and

(xi) natural area.

(C) the project will provide improved natural water-based park and recreation opportunities, up to a total of 6 points. The project provides direct park and recreation or conservation op-

portunities which do not degrade the resource along existing quality water bodies, for no more than one of the following:

- (i) coast or lake: 6 points;
- (ii) bay or estuary: 5 points;
- (iii) river: 4 points (only water bodies named as "rivers" may receive points under this category. All others, e.g., creeks, brooks, bayous, branches, etc., are considered "streams");
- (iv) stream (continuous flow): 3 points;
- (v) pond: 2 points ("ponds" are generally man-made and no larger than five surface acres. Points will not be awarded for constructing ponds under this category.); or
- (vi) wetland: 1- 3 points, dependent upon size and quality.

(D) the project will improve the geographic distribution or innovative use of park and recreation lands and facilities in the project's service area or within the sponsor's jurisdiction, up to a total of 10 points.

(i) project provides the first public park in the sponsor's jurisdiction or intended service area: 10 points; or

(ii) project provides significantly new and different park and recreation opportunities (other than school facilities) in the sponsor's jurisdiction or intended service area: 1-10 points. Points for this item shall be awarded only if specific recreation elements are identified in a locally adopted park, recreation, and open space master plan or, if the sponsor does not have an adopted master plan, by a documented public input process. Point awards shall be based on the percentage of construction budget and will be calculated as follows: new and different facility costs, divided by total construction costs, multiplied by 10.

(E) the project maximizes the use of development funds for facilities which provide direct park and recreation opportunities, up to a total of 20 points, determined by dividing the direct recreational facilities costs, including trees and drip irrigation, by the total construction costs and multiplying the result by 20. "Total Facilities Costs" includes park/recreation and support/infrastructure facilities, contingency, and all required program signage costs in excess of \$1,000.

(F) the project improves park and recreation opportunities for low-income, minority, and elderly, up to a total of 15 points.

(i) project improves opportunities for low-income citizens (defined as meeting any federal standard of eligibility for low-income status): determined by multiplying the percentage of population qualifying as low-income by 5 and dividing by 100. Maximum of 5 points.

(ii) project improves opportunities for minority citizens: determined by multiplying the percentage of population qualifying as minority by 5 and dividing by 100. Maximum of 5 points.

(iii) project improves opportunities for the elderly: 1 point for each facility or activity that is identified as a need for this special population in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process. Maximum of 5 points.

(G) the project involves documented cooperation between the sponsor and other public or private entities to provide park and recreation opportunities at the project site(s). Maximum of 20 points.

(i) project involves the contribution of resources from sources other than the sponsor, including publicly owned non-parkland, which serves as all or part of the sponsor's matching share of funds. Maximum of 15 points. Points shall be awarded on a percentage basis, determined by dividing the total outside contribution value by the total match and multiplying the result by 15.

(ii) project involves cooperation between the sponsor and other public or private entities and resources are contributed to the overall project for non-grant assisted facilities (example: a county constructs roads/parking facilities for a city, but no grant funds are requested for roads/parking): 1 point per activity, to a maximum of 5 points.

(H) the project provides for the acquisition and preservation/conservation of park and recreation lands, including publicly owned non-parkland, which consist of regionally representative natural resources or provides desirable wetlands, open space, water access, or needed parkland. Total point range: 1-30 points for not more than one of the following:

(i) project provides for the acquisition and preservation/conservation of a federal, state, regional, or local government identified natural area which is recognized in an acceptable, published planning document for having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife: 5-30 points, based on acreage and/or quality; or

(ii) project provides for the acquisition and preservation/conservation of a significant wetland area: 5-25 points, based on acreage and/or quality; or

(iii) project provides for the acquisition and preservation/conservation of natural open space land or water for human use and enjoyment that is two acres or larger in size, relatively free of man-made structures (including creek corridors, floodways, natural drainage basins, and areas which may be enhanced for native habitat), and which is identified in an acceptable, published, and adopted local, jurisdiction-wide open space plan or master plan: 5-20 points, based on acreage and/or quality; or

(iv) project provides for the acquisition of land which would provide needed public access to park and recreational waters (see definitions under criteria listed in subparagraph (C) of this paragraph), 1-5 points, as determined below:

(I) coast or lake: 5 points;

(II) bay or estuary: 4 points;

(III) river: 3 points;

(IV) stream (continuous flow): 2 points;

(V) pond: 1 point; or

(v) project provides for the acquisition of needed recreational land proposed for future development: 10 points.

(I) project provides for the renovation or adaptive reuse of an existing obsolete park and recreation area or facilities, determined by dividing the renovation cost by the total construction cost and multiplying the result by 25. Maximum of 25 points.

(J) project promotes environmentally responsible activities and development by the use of activities or techniques such as xeriscape/native plant materials for landscaping, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist, alternative energy sources, water catchment systems, or other resource conservation mea-

tures. Points for this category will be awarded based on the diversity, innovative nature and/or cost of the project elements, up to a maximum of 10 points.

(K) project provides significant linkage, i.e., trails and green corridors (not to include streets or sidewalks) to other parks and recreation areas, neighborhoods, or public facilities, up to a maximum of 3 points.

(L) project provides park and recreation opportunities that enhance and encourage appreciation and preservation of site-based cultural (historical and archaeological) resources through interpretive facilities or preservation strategies: maximum of 3 points. Points for this item are awarded based on the significance of the enhancement.

(M) project supports the department's Land and Water Resources Conservation and Recreation Plan (Plan). Sponsor must address how the project meets the goals of the Plan in the proposal narrative. Up to a maximum of 5 points.

(N) sponsor is in compliance with previously funded projects. If sponsor is not in compliance with existing grant obligations, 5 points will be deducted from the project score.

(O) a complete application was received by the application deadline - 5 points will be awarded.

§61.134. Grants for Indoor Recreation Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for indoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. The priority ranking of a project depends on its score in relation to the scores of other projects under consideration. Funding of projects will depend on the availability of TRPA funds. Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the sponsor and not accepted for resubmission. In general, recommended priorities for indoor recreation projects are:

- (1) to ensure sponsor performance on active grants and compliance at previously assisted grant sites;
- (2) to recognize and reward local planning;
- (3) to provide indoor recreational diversity;
- (4) to improve geographic distribution and innovative use of indoor recreation facilities;
- (5) to reward cooperative efforts between project sponsors and other entities;
- (6) to provide for the renovation or adaptive reuse of existing, obsolete indoor recreation or other facilities or structures;
- (7) to improve indoor recreation opportunities for low-income, minority, and elderly citizens;
- (8) to promote environmentally responsible activities and development; and
- (9) to support the department's Land and Water Resources Conservation and Recreation Plan.

(b) Local master plan standard requirements. Minimum master plan standards must be met to qualify for planning and priority points. Local sponsors may submit applications without having a department-approved master plan; however, only those sponsors that have a department-approved park, recreation and open space master plan will receive points for completing a local plan. In addition, only

proposals that address priority needs identified in approved plans will receive priority points under the provisions of subsection (c) of this section. Master plans must have been received in an approvable format at least 60 days prior to the application submission deadline at which time credit is sought. The following are minimum master plan standards:

(1) Proof of adoption. The plan must be formally adopted or otherwise endorsed by act or resolution of the applicable governing body of the sponsor, and the endorsement must be included with the document.

(2) Jurisdiction-wide scope. The plan must be complete, comprehensive, and assess the entire jurisdiction area of the project sponsor. County plans must cover the entire county, and city or district plans must cover the entire city or district. For large urban areas, plans should cover the entire jurisdiction, and then break the jurisdiction down into regions, sectors, precincts, districts, etc., as appropriate. Master plans that contemplate service delivery across more than one jurisdiction may be submitted by a local sponsor, with any necessary supplemental information, provided the plan has been formally adopted or otherwise endorsed by act or resolution of the applicable governing body of the sponsor.

(3) Plan duration. Plans must specifically identify the time period within which the goals and objectives of the plan are to be carried out. The plan should cover a minimum ten-year period. If a plan is more than five years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input. Plans older than 10 years will be considered obsolete and new plans will be required.

(4) Plan content. The following information should be included in the document:

- (A) introduction;
- (B) goals and objectives;
- (C) plan development process (discuss when the planning process began, plan phases, public input received, survey/studies conducted, committees and/or personnel involved, etc.);
- (D) area/facility concepts and standards, including:
 - (i) population/area service and acreage goals;
 - (ii) "typical" park and facility standards; and
 - (iii) applicable local codes, ordinances, and other requirements for community or neighborhood development;
- (E) inventory of existing park, recreation and open space areas and facilities (including schools);
- (F) needs assessment and identification. Information under this subparagraph shall be area/facility specific, and may include basic support facilities/infrastructure which are critical to the recreational experience. A discussion and identification of open space needs in the master plan, or a separate open space plan, shall be included.
- (G) prioritization of needs. Applicant shall include:
 - (i) separate priority lists for outdoor and indoor needs;
 - (ii) if necessary, a map of all specific area(s) intended for open space acquisition and preservation, identified as a need, discussed, and prioritized, if desired;

(iii) where appropriate, a discussion of renovation/redevelopment needs, which may be ranked as a priority; and

(iv) plan implementation recommendations, including a timeline and discussion of resources for meeting priorities (must identify and prioritize which needs are to be met, where and when). Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input.

(H) illustrations, maps, charts, surveys, etc.

(c) Indoor recreation project priority scoring system. If the sponsor is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, an application will be scored and presented for award consideration. If the sponsor does not meet the requirements of this paragraph, the application will not be scored or considered further. A project proposal meeting the requirements of this paragraph shall be evaluated according to:

(1) whether or not the sponsor has a current department-approved master plan on file at the time of application and the extent to which the project will satisfy the priority indoor recreation needs identified in the master plan required by this section, up to a total of 15 points.

(A) for having a current department-approved master plan on file at the time of application submission 5 points;

(B) for satisfying 3 of the top 3 priority needs 10 points; and

(C) for satisfying 2 of the top 3 priority needs 6 points.

(2) the extent to which the project will provide diversity of public indoor recreation facilities or opportunities. Points shall be awarded based on the number of indoor recreation facilities provided. One point will be awarded for each type of recreation facility, up to a maximum of 10 points, provided that each recreation element is identified as a need in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process. Points may be deducted for projects which propose support facilities which do not support recreational activities.

(3) the extent to which the project will improve geographic distribution or innovative use of public indoor recreation facilities. Maximum of 20 points.

(A) project provides the first public indoor recreation facility in the sponsor's jurisdiction or intended service area: 20 points; or

(B) project provides significantly new and different public indoor recreation facilities (other than school facilities) in the sponsor's jurisdiction or intended service area, based on 5 points per opportunity, provided the individual recreation elements are identified as a need in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process. Maximum of 15 points.

(4) the extent to which the project involves cooperation between the sponsor and other public or private entities to provide public indoor recreation facilities at the project site. Maximum of 20 points.

(A) project involves the contribution of resources, including publicly owned non-parkland, from sources other than the sponsor, which serves as all or part of the sponsor's matching share of funds. Maximum of 15 points. Points shall be awarded on a

percentage basis, determined by dividing the total outside contribution value by the total match and multiplying the result by 15.

(B) project involves documented cooperation between the sponsor and other public or private entities and/or resources are contributed to the overall project for non-grant assisted facilities (example: a county constructs roads/parking facilities for a city, but no grant funds are requested for roads/parking): 1 point per documented activity, to a maximum of 5 points.

(5) the extent to which the project provides for the renovation or adaptive reuse of an existing facility, determined by dividing the renovation cost by the total construction cost and multiplying the result by 25. Maximum of 25 points.

(6) the extent to which the project improves public indoor recreation opportunities for low-income, minority, or elderly citizens, up to a total of 15 points.

(A) project improves opportunities for low-income citizens (defined as meeting any federal standard of eligibility for low-income status: determined by multiplying the percentage of population qualifying as low-income by 5 and dividing by 100. Maximum of 5 points.

(B) project improves opportunities for minority citizens: determined by multiplying the percentage of population qualifying as minority by 5 and dividing by 100. Maximum of 5 points.

(C) project improves opportunities for the elderly. Points for this item shall be awarded on the basis of recreational facility type and service or activity that is identified as a need for the special population in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process. Maximum of 5 and dividing by 100 points.

(7) the extent to which the project promotes the environmentally responsible activities and development by the use of activities or techniques such as xeriscape/native plant materials for landscaping, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist, alternative energy sources, water catchment systems, or other resource conservation measures. Points shall be awarded based on the diversity, innovative nature and/or cost of the project elements, up to a maximum of 10 points.

(8) the extent to which the project supports the department's Land and Water Resources Conservation and Recreation Plan (Plan). Sponsor must address how the project meets the goals of the Plan in the proposal narrative. Up to a maximum of 5 points.

(9) sponsor is in compliance with previously funded projects. If sponsor is not in compliance with existing grant obligations, 5 points will be deducted from the project score.

(10) a complete application was received by the application deadline - 5 points will be awarded to the project score.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2008.
TRD-200803053

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: July 3, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 3. SUPPORT SERVICES

34 TAC §1.71

The Comptroller of Public Accounts adopts the repeal of §1.71, concerning purchasing, without changes to the proposed text as published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3565). The repeal is necessary because The Board of Control was dissolved, and the duties became part of the Texas Building and Procurement Commission. House Bill 3560, 80th Legislature, 2007, transferred the purchasing duties of Texas Building and Procurement Commission to the Comptroller of Public Accounts on September 1, 2007.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Government Code, Title 4, §2155.0012, which allows the comptroller to administer this chapter relating to general purchasing rules.

The repeal implements Government Code, Title 4, §2155.011, which transfers the duties of the commission to the comptroller.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 10, 2008.

TRD-200803006
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: June 30, 2008
Proposal publication date: May 2, 2008
For further information, please call: (512) 475-0387

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34 TAC §1.72

The Comptroller of Public Accounts adopts an amendment to §1.72, concerning protest of agency purchases, without changes to the proposed text as published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3565). The amendment is to correct the title of "Director of Administrative Services" which is now "Director of Agency Administration" throughout the section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Government Code, Title 4, §2155.067, which allows each state agency to adopt purchasing protest procedures.

The amendment implements Government Code, Title 4, §2155.0012, which allows the comptroller to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 10, 2008.

TRD-200803007
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: June 30, 2008
Proposal publication date: May 2, 2008
For further information, please call: (512) 475-0387

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SUBCHAPTER D. TEXAS FILM INDUSTRY LOAN GUARANTEE PROGRAM

34 TAC §§1.330 - 1.332

The Comptroller of Public Accounts adopts the repeal of §§1.330 - 1.332, concerning general provisions; purposes, limitations, and lender loan requirements; and filing requirements and consideration of the loan guarantee application, for the administration of the Texas Film Industry Loan Guarantee Program, without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3725). The existing §§1.330 - 1.332 are being repealed pursuant to the expiration of the statute under Sunset Provisions in Government Code, §403.335.

No comments were received regarding adoption of the repeal.

These repeals are adopted under Government Code, Chapter 403, Subchapter N, §403.335, which authorizes the comptroller to abolish the program when the subchapter expires September 1, 2005.

The repeals implement Government Code, §403.335.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2008.

TRD-200803082
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: July 6, 2008
Proposal publication date: May 9, 2008
For further information, please call: (512) 475-0387

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PART 12. STATE EMPLOYEE CHARITABLE CAMPAIGN

CHAPTER 329. ELIGIBILITY CRITERIA FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §329.5

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) adopts amendments to §329.5, concerning re-certification requirements, without changes to the proposed text as published in the January 25, 2008, issue of the *Texas Register* (33 TexReg 659). Proposed amendments to §329.1 were withdrawn on May 22, 2008, and withdrawal notice was published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4499). New proposed amendments to §329.1 were published in the June 20, 2008, issue of the *Texas Register*.

The amendment to §329.5 more accurately specifies the information from the Form 990 that must be submitted when an organization is applying to participate using the re-certification procedure, wherein less material is generally required than that which is required when an organization first applies to participate. Because the first part of the Form 990, which ends with the signature page, may be more than six pages long, the language is being changed to clarify that the SPC requires organizations to submit all pages of the Form 990 that precede and include the signature page.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment also implements Government Code, §659.140(e)(3), wherein the SPC is directed to determine the eligibility of a federation or fund and its affiliated agencies to participate in the SECC. Basic eligibility requirements are addressed by statute in §659.146, concerning eligibility of charitable organizations in general, and eligibility of federations and funds for statewide participation. The amendment incorporates those basic requirements and provide a process to facilitate review of an organization based on those provisions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2008.

TRD-200803045

Michael C. Esparza

Certifying Officer, State Policy Committee

State Employee Charitable Campaign

Effective date: July 2, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 475-0387

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CHAPTER 330. ELIGIBILITY CRITERIA FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §330.7

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) adopts amendments to §330.7, concerning re-certification requirements, without changes to the proposed text as published in the January 25, 2008, issue of the *Texas Register* (33 TexReg 661). Proposed amendments to §330.1 were withdrawn on May 22, 2008, and withdrawal notice was published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4499). New proposed amendments to §330.1 were published in the June 20, 2008, issue of the *Texas Register*.

The amendment to §330.7 more accurately specifies the information from the Form 990 than must be submitted when an organization is applying to participate using the re-certification procedure, wherein less material is generally required than that which is required when an organization first applies to participate. Because the first part of the Form 990, which ends with the signature page, may be more than six pages long, the language is being changed to clarify that the SPC requires organizations to submit all pages of the Form 990 that precede and include the signature page.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment implements Government Code, §659.143(e)(2), wherein the LEC is directed to determine the eligibility of local charitable organizations to participate in the SECC. Basic eligibility requirements are addressed by statute in §659.146, concerning eligibility of charitable organizations in general. These amendments incorporate those basic requirements and provide a process to facilitate review of an organization based on those provisions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200803046

Michael C. Esparza

Certifying Officer, State Policy Committee

State Employee Charitable Campaign

Effective date: July 2, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 475-0387

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CHAPTER 331. REVIEW AND APPEAL PROCEDURES FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §331.5

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) adopts amendments to §331.5, concerning appeal process, without changes to the proposed text as published in the January 25, 2008, issue of the *Texas Register* (33 TexReg 662).

The amendment to §331.5 changes the deadline for organizations to submit appeals to the SPC from a date tied to the date of a future SPC meeting to a date specific to be determined by the State Campaign Manager (SCM) on an annual basis. The change allows for organizations to more easily determine the specific date for submitting appeals without having to first determine the date of the next scheduled SPC meeting, and it helps ensure that the SCM will not create a deadline that inadvertently conflicts with the rule. Historically, the SCM has informed applicants of the date by which appeals are due in the letter notifying of the rejection of the application. This has afforded applicants the greatest and most accurate notice concerning the date that appeals are due. This rule would not change that historical and current practice but is instead predicated on that practice, namely, that the SCM will notify the applicants of the date by which appeals must be submitted.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment implements Government Code, §659.146(e), which authorizes the SPC to prescribe the manner by which appeals from SPC decisions on statewide applications shall be conducted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2008.

TRD-200803047

Michael C. Esparza

Certifying Officer, State Policy Committee

State Employee Charitable Campaign

Effective date: July 2, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 475-0387

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CHAPTER 332. REVIEW AND APPEAL PROCEDURES FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §332.1, §332.5

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) adopts amendments to §332.1, concerning administrative review, and §332.5, concerning appeal process, without changes to the proposed text as published in the January 25, 2008, issue of the *Texas Register* (33 TexReg 663).

The amendment to §332.1 instructs the LCM on the handling of applications that are not eligible for LEC review as a result of the application being incomplete or missing required documentation. Under the amended rule, the LCM would be required to submit a report to the LEC of the applications that will not be submitted for LEC review for the reasons stated above. This step is added so that the LEC is aware of applications that are being received by the SECC but that are not being reviewed. In the event an LEC member were to be contacted regarding one of these applications, the LEC member would have the benefit of first having been made aware of the situation by the LCM report.

The amendment to §332.5 changes the deadline for organizations to submit appeals to the SPC from a date tied to the date of a future SPC meeting to a date specific to be determined by the State Campaign Manager (SCM). The change allows for organizations to determine the specific date for submitting appeals more easily without having to first determine the date of the next scheduled SPC meeting, and it helps ensure that the SCM will not create a deadline that inadvertently conflicts with the rule. Historically, the LCM has informed applicants of the date by which appeals are due to the SPC in the letter rejecting the application. This has afforded applicants the greatest and most accurate notice concerning the date that appeals are due. This rule would not change that historical and current practice but is instead predicated on that practice, namely, that the SCM will notify the LCM and that the LCM will notify the applicants of the date by which appeals must be submitted.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment to §332.1 implements Government Code, §659.144(c)(2), which directs the LCM to manage the local state employee charitable campaign in the campaign area.

The amendment to §332.5 implements Government Code, §659.147(d) which authorizes the SPC to prescribe the manner by which appeals from LEC decisions on local applications shall be conducted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2008.
TRD-200803048

Michael C. Esparza
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Effective date: July 2, 2008
Proposal publication date: January 25, 2008
For further information, please call: (512) 475-0387

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Residential Construction Commission

Title 10, Part 7

The Texas Residential Construction Commission (commission) proposes its intention to review 10 TAC §§300.1 - 300.4 and §301.2. This review is proposed in accordance with Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for re-adoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist. Section 300.1 and §300.2 were adopted to be effective May 13, 2004. Section 300.3 was adopted to be effective February 3, 2005. Section 300.4 was adopted to be effective June 28, 2005. Section 301.2 was adopted to be effective October 26, 2004.

The affected sections in Chapter 300 relate to agency administration and operations as guided by various sections of the Texas Government Code. Section 301.2 relates to the rulemaking process for state agencies required under Chapter 2001, Texas Government Code, known as the Administrative Procedures Act.

The commission has conducted a preliminary review of these rules and has determined that reasons for adopting these rules continue to exist. These rules are needed for compliance with provisions of the Texas Government Code governing agency operations and administrative procedures. The commission invites comments on whether the reasons for these rules continue to exist.

The commission's review of these rules has revealed that §301.2 can be repealed and re-adopted as §300.12 in Chapter 300, as a part of the agency's efforts to place all of its general administrative provisions in the same chapter of Title 10 of the Texas Administrative Code. The commission concurrently proposes to repeal §301.2 and propose it as new §300.12, as described in the Proposed Rules section of this issue of the *Texas Register*. This change is proposed as a result of the commission's rule review and for consistency with the commission's ongoing commitment to regulatory reform. The specific changes are noted in the proposed rule preamble of §301.2.

Interested persons may submit written comments (12 copies) on the proposed rule review and necessity of provisions in §§300.1 - 300.4 and §301.2 to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas 78711. In the alternative, comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Chapter 300 rule review" with the rule number(s) in the subject line. Comments regarding the necessity of §§300.1 - 300.4 and §301.2 should be organized in numerical order and, when submitted

concurrently with comments regarding the proposed rule amendments, should be clearly identified as relating to the rule review and necessity of the identified rule. The deadline for submission of comments is twenty (20) days from the date of publication of the proposed sections in the *Texas Register*. Comments received after that deadline submission date or comments submitted electronically without "Chapter 300 rule review" in the subject line may not be considered.

TRD-200803083

Susan K. Durso
General Counsel

Texas Residential Construction Commission
Filed: June 16, 2008

Adopted Rule Reviews

Department of Assistive and Rehabilitative Services

Title 40, Part 2

In accordance with Texas Government Code §2001.039, the Department of Assistive and Rehabilitative Services (DARS) adopts the review of Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services.

Texas Government Code, Chapter 2001 (the Administrative Procedure Act), §2001.039, Agency Review of Existing Rules, requires that each state agency review and consider for readoption each rule adopted by that agency. 40 TAC Chapter 104 consists of Subchapter C, Purchase of Goods and Services, §§104.251, 104.253, 104.255, 104.257, 104.259, 104.261, and 104.263, and Subchapter J, Protest Procedures, §104.301. Texas Health and Human Services Commission has determined that the reasons for initially adopting these rules continue to exist.

The proposed review was published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8863).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services.

TRD-200803049

Sylvia F. Hardman
General Counsel

Department of Assistive and Rehabilitative Services
Filed: June 12, 2008

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal, 16 Texas Administrative Code (TAC) Chapter 57, For-Profit Legal Service Contract Companies, in accordance with the requirements of Texas Government Code, §2001.039. The Notice of Intent to Review was published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3303).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of 16 TAC Chapter 57, For-Profit Legal Service Contract Companies, to determine if the rules are obsolete, reflect current legal and policy considerations, and reflect current procedures of the Department.

The Department's review determined that the reasons for initially adopting the rules continue to exist. The rules continue to be essential in implementing the provisions of Texas Occupations Code, Chapter 953. Based on the Department's review, however, the Texas Commission of Licensing and Regulation (Commission) proposes that amendments be made which may be helpful in clarifying statutory and administrative rule requirements and reflecting current Department procedures.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on May 19, 2008. One public comment was received in response to the notice. The commenter expressed a concern that sales representatives are required to be registered with the Department. The requirement for sales representatives to register with the Department is statutory and is not an issue that can be addressed by rulemaking.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 57, For-Profit Legal Service Contract Companies.

TRD-200803070

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: June 16, 2008



The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal, 16 Texas Administrative Code (TAC) Chapter 70, Industrialized Housing and Buildings, in accordance with the requirements of Texas Government Code, §2001.039. The Notice of Intent to Review was published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3303).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of 16 TAC Chapter 70, Industrialized Housing and Buildings, to determine if the rules are obsolete, reflect current legal and policy considerations, and reflect current procedures of the Department.

The Department's review determined that the reasons for initially adopting the rules continue to exist. The rules continue to be essential

in implementing the provisions of Texas Occupations Code, Chapter 1202. Based on the Department's review, however, the Texas Commission of Licensing and Regulation (Commission) proposes that amendments be made which may be helpful in clarifying statutory and administrative rule requirements and reflecting current Department procedures.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on May 19, 2008. No public comments were received in response to the notice.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 70, Industrialized Housing and Buildings.

TRD-200803071

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: June 16, 2008



The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal, 16 Texas Administrative Code (TAC) Chapter 76, Water Well Drillers and Water Well Pump Installers, in accordance with the requirements of Texas Government Code, §2001.039. The Notice of Intent to Review was published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3304).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of 16 TAC Chapter 76, Water Well Drillers and Water Well Pump Installers, to determine if the rules are obsolete, reflect current legal and policy considerations, and reflect current procedures of the Department.

The Department's review determined that the reasons for initially adopting the rules continue to exist. The rules continue to be essential in implementing the provisions of Texas Occupations Code, Chapters 1901 and 1902. Based on the Department's review, however, the Texas Commission of Licensing and Regulation (Commission) proposes that amendments be made which may be helpful in clarifying statutory and administrative rule requirements and reflecting current Department procedures.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on May 19, 2008. No public comments were received in response to the notice.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 76, Water Well Drillers and Water Well Pump Installers.

TRD-200803072

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: June 16, 2008



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Settlement Agreement in Harris County, Texas and the Texas Commission on Environmental Quality v. Louisiana Gas Development Corporation; Cause No. 2008-26210, 127th Judicial District, Harris County, Texas.

Background: This suit alleges violations of the Texas Clean Air Act resulting from the blow out of a natural gas well in Harris County, Texas. The Defendant is Louisiana Gas Development Corporation. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs. The Clean Air Act violations are for air nuisance and for the emission of air contaminants.

Nature of Settlement: The settlement awards \$42,000.00 in civil penalties split between the State and Harris County. The settlement awards \$4,000.00 in attorney's fees to the State and \$4,000.00 in attorney's fees to Harris County.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments, and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For further information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200803061

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: June 13, 2008



Notice of Settlement

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold

consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Settlement Agreement in Harris County, Texas and the State of Texas v. Intercontinental Terminals Company, L.L.C.; Cause No. 2007-28175, 157th Judicial District, Harris County, Texas.

Background: This suit alleges violations of the Texas Clean Air Act resulting from emissions of air contaminants from a petrochemical handling and storage plant in Harris County, Texas. The Defendant is Intercontinental Terminals Company, L.L.C. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs. The Clean Air Act violations are for air nuisance and for the emission of air contaminants.

Nature of Settlement: The settlement awards \$43,500.00 in civil penalties split between the State and Harris County. The settlement awards \$4,000.00 in attorney's fees to the State and \$4,000.00 in attorney's fees to Harris County. The Agreed Final Judgment requires the Defendant to comply with the notification requirements under 30 Texas Administrative Code §101.201 and §327.3. It also requires the Defendant to develop and implement measures designed to prevent unauthorized emissions and to improve reporting procedures, and requires the Defendant to submit a copy of this report to the State and Harris County.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments, and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For further information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200803062

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: June 13, 2008



Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapter 2101, Subchapter C, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 403, Subchapter C, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the award of the following contract:

A contract is awarded to Salvaggio, Teal & Associates PMB 179, 4815 West Braker Lane, Suite 502, Austin, Texas 78759. The total amount for the contract is \$356,052. The term of the contract is June 16, 2008 through December 31, 2008.

The Comptroller's Request for Proposals (RFP #184a) related to this contract award was published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3324).

TRD-200803110

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: June 17, 2008



Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.301 and §403.3011, Texas Government Code; §5.102, Property Tax Code; and Chapter 271, Local Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #187a) from qualified, independent firms to provide pooled consulting services to Comptroller. The successful respondent(s) will assist Comptroller in conducting Appraisal Standards Reviews (ASR) of up to thirty (30) county appraisal districts throughout the state on an as-needed, as requested basis. Comptroller reserves the right to select multiple contractors to participate in conducting the ASRs on a "pooled" basis, as set forth in the Request for Proposals (RFP). The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 8, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM 200M, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, June 27, 2008, after 10 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: <http://esbd.cpa.state.tx.us> after 10 a.m. (CZT) on Friday, June 27, 2008.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. (CZT), on Friday, July 11, 2008. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, July 18, 2008, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above (ROOM 200M) no later than 2 p.m. (CZT), on Friday, July 25, 2008. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of

any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - June 27, 2008, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - July 11, 2008, 2 p.m. CZT; Official Responses to Questions Posted - July 18, 2008, or as soon thereafter as practical; Proposals Due - July 25, 2008, 2 p.m. CZT; Contract Execution - August 28, 2008, or as soon thereafter as practical; Commencement of Project Activities - September 8, 2008, or as soon thereafter as practical.

TRD-200803106

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: June 17, 2008



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/23/08 - 06/29/08 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/23/08 - 06/29/08 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/08 - 07/31/08 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/08 - 07/31/08 is 5.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200803139

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 18, 2008



Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Texas Telcom Credit Union (Dallas) seeking approval to merge with Union Pacific & Transportation Employees Federal Credit Union (Dallas). Texas Telcom Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200803120
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2008

◆ ◆ ◆
Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received from Galleria Credit Union, Dallas, Texas. The credit union is proposing to change its name to Prestige Community Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200803121
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2008

◆ ◆ ◆
Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from InvesTex Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live or work within a 10-mile radius of the InvesTex Credit Union offices located at 905 Aldine Bender, Houston, Texas 77032, 230 Cypresswood, Spring, Texas 77388, 5444 Atascocita Rd., Suite 108, Humble, Texas 77346, 900 Wunsche Loop, Spring, Texas 77373, 24922 Tomball Parkway, Suite 100, Tomball, Texas 77375, and 811 North Loop West, Houston, Texas 77008, to be eligible for membership in the credit union.

An application was received from DATCU, Denton, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses and other legal entities located in the city of Coppell, Texas, to be eligible for membership in the credit union.

An application was received from First Service Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of The Dump who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

An application was received from Metroplex Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school or work within a 10-mile radius of our principal office located at 2501 E. Hebron Parkway, Carrollton, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form

may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcred.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200803119
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2008

◆ ◆ ◆
Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Cooperative Teachers Credit Union, Tyler, Texas (#1 and #2) - See *Texas Register* issue dated March 28, 2008.

Firstmark Credit Union, San Antonio, Texas - See *Texas Register* issue dated March 28, 2008.

First Service Credit Union, Houston, Texas (#1 and #2) - See *Texas Register* issue dated April 25, 2008.

Articles of Incorporation - 50 Years to Perpetuity - Approved

Highway District 2 Credit Union, Fort Worth, Texas

TRD-200803122
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2008

◆ ◆ ◆
East Texas Council of Governments

Request for Proposals for Information and Communication Technology Provider

The East Texas Council of Governments (ETCOG) is issuing a Request for Proposals (RFP) to select a credentialed Information and Communication Technology (ICT) provider. There are twelve (12) ICT functions listed in the RFP. The RFP is available to view online at www.etcog.org. Proposals are due to ETCOG on August 4, 2008 at 5:00 p.m. CST.

NOTE: Any corrections, alterations or answers to questions concerning the RFP will be posted at the aforementioned web site. It is the responsibility of the proposer to review the web site periodically for corrections, alterations or answers to questions.

ETCOG is an Equal Opportunity Employer. Auxiliary aids and services are available upon request. Telephone: (903) 984-8641 or TDD (800) 725-2989.

TRD-200803081
David A. Cleveland
Executive Director
East Texas Council of Governments
Filed: June 16, 2008

Employees Retirement System of Texas

Request for Qualifications - Corporate Governance Services

The Employees Retirement System of Texas ("ERS") is seeking to identify one or more qualified vendors ("Vendors") and is soliciting applications for this project ("Project"), which is comprised of three parts as follows: (i) independent securities litigation auditing and monitoring services; (ii) independent U.S. and Non-U.S. individual company corporate governance ratings research; and (iii) independent U.S. and Non-U.S. proxy research, vote advisory and related services. Qualified Vendors may respond to one or more parts of the Project.

Qualified Vendors wishing to respond to the Request for Qualifications ("RFQ") should have the ability to provide one or more of the following services: Independent U.S. and Non-U.S. proxy voting research, advisory and individual public company corporate governance rating services, web-based proxy voting platform, record date notifications, shares on loan information related to proxy voting, web-based proxy vote disclosure and rationale, corporate governance and securities litigation policy development advisory services, independent securities class action litigation auditing and monitoring services, and other independent corporate governance research services and customer service and support as necessary for the ERS Board of Trustees ("Board") to perform its fiduciary duties.

It is anticipated that the (i) independent securities class action litigation auditing and monitoring ("Independent Securities Litigation Auditing and Monitoring Services") will begin on or after September 1, 2008; the (ii) independent global corporate governance ratings research subscription ("Independent Corporate Governance Ratings Research") will begin on or after September 1, 2008; and the (iii) independent proxy voting research, vote disclosure and related services ("Independent Proxy Voting Services") will begin on or after January 1, 2009.

ERS will base its evaluation and selection of the firm(s) on factors that are in the best interest of ERS, including, but not limited to criteria outlined in this notice and in the RFQ, such as the following, which are not necessarily listed in order of priority: compliance with the RFQ; qualifications of the proposed professional staff; technical expertise, including experience with providing similar corporate governance services to other public pension funds of a similar size to ERS or larger; the quality of the response, including the demonstration of a clear understanding of the scope of the work as well as the appropriateness and adequacy of proposed cost of the services; and other factors deemed appropriate by ERS.

ERS reserves the right to reject any response submitted which is not timely or does not meet the criteria specified in this notice and in the RFQ. ERS is under no legal requirement to execute a contract on the basis of this notice. ERS will not pay any costs incurred by any firm in responding to this notice or RFQ or in connection with the preparation thereof.

A copy of the complete RFQ can be obtained from ERS on or after June 27, 2008. To request a copy of the RFQ or for additional information, please contact Kelly Gonzales at ERS at (512) 867-7199, or by e-mail at kelly.gonzales@ers.state.tx.us. The deadline for receipt of responses by ERS is 4:00 p.m. on July 28, 2008.

TRD-200803144

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: June 18, 2008

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding West Jefferson County Municipal Water District, Docket No. 2005-1044-PWS-E on June 10, 2008 assessing \$1,510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Tamez dba Plastics International North, Docket No. 2005-1274-MSW-E on June 10, 2008 assessing \$21,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ron Edwards dba Tawakoni Stop II, Docket No. 2005-1378-PST-E on June 10, 2008 assessing \$2,565 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prince A, Inc., Docket No. 2005-1476-PST-E on June 10, 2008 assessing \$5,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Taufiq H. Ahmed dba Comet Cleaners, Docket No. 2006-0938-DCL-E on June 10, 2008 assessing \$889 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mubeen Enterprise, Inc. dba Spotless Cleaners, Docket No. 2006-1251-DCL-E on June 10, 2008 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tuan Ngoc Nguyen dba Memorial Cleaners, Docket No. 2006-1271-DCL-E on June 10, 2008 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K. B. Master Cleaners, Inc. dba KB Master Cleaners, Docket No. 2006-1408-DCL-E on June 10, 2008 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-6501, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises, LLC, Docket No. 2006-1513-AIR-E on June 10, 2008 assessing \$368,445 in administrative penalties with \$73,689 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tootsie S. Farris dba E & A Energy, Docket No. 2006-1683-PST-E on June 10, 2008 assessing \$9,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Felipe Posada dba Key Road Subdivision Water Supply, Docket No. 2006-1698-PWS-E on June 10, 2008 assessing \$3,098 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Haider A. Inc. dba Stop In Food Mart, Docket No. 2006-1928-PST-E on June 10, 2008 assessing \$4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-6501, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wilke Tire Service, Inc., Docket No. 2006-2059-MSW-E on June 10, 2008 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Naseer Ahmad dba Super Stop 3, Docket No. 2007-0094-PST-E on June 10, 2008 assessing \$4,110 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John L. Moore, Docket No. 2007-0271-WOC-E on June 10, 2008 assessing \$675 in administrative penalties with \$135 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-0493-AIR-E on June 10, 2008 assessing \$228,720 in administrative penalties with \$45,742 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Canyon Vista Custom Homes, LLC, Docket No. 2007-0600-WQ-E on June 10, 2008 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CCRS-Consolidated Construction Recycling Services, Ltd., Docket No. 2007-0858-MSW-E on June 10, 2008 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (713) 767-3694, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Shredder Company, LLC, Docket No. 2007-0960-AIR-E on June 10, 2008 assessing \$40,560 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sport Auto Enterprise, Inc., Docket No. 2007-1015-AIR-E on June 10, 2008 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sand Express, L.P., Docket No. 2007-1063-AIR-E on June 10, 2008 assessing \$4,040 in administrative penalties with \$808 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825 3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ofelia Bosquez, Docket No. 2007-1277-AIR-E on June 10, 2008 assessing \$1,120 in administrative penalties with \$224 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Lerma, Jr. and Marta Villarreal dba G S I II, Docket No. 2007-1294-AIR-E on June 10, 2008 assessing \$5,750 in administrative penalties with \$1,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stripes LLC Stripes 2167, Docket No. 2007-1446-PST-E on June 10, 2008 assessing \$11,350 in administrative penalties with \$2,270 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Viridis Energy (Texas), LP, Docket No. 2007-1475-AIR-E on June 10, 2008 assessing \$7,455 in administrative penalties with \$1,491 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2007-1512-AIR-E on June 10, 2008 assessing \$8,600 in administrative penalties with \$1,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas M. Thorp dba Thorp's Laun-Dry, Docket No. 2007-1554-IHW-E on June 10, 2008 assessing \$5,450 in administrative penalties with \$1,090 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert L. Weaver, Docket No. 2007-1557-WOC-E on June 10, 2008 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2007-1606-AIR-E on June 10, 2008 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Merisol USA LLC, Docket No. 2007-1621-AIR-E on June 10, 2008 assessing \$6,250 in administrative penalties with \$1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of The Colony, Docket No. 2007-1622-MWD-E on June 10, 2008 assessing \$51,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Graham, Docket No. 2007-1624-MWD-E on June 10, 2008 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Chemical & Metallurgical Corporation, Docket No. 2007-1631-IHW-E on June 10, 2008 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mason, Docket No. 2007-1654-MSW-E on June 10, 2008 assessing \$11,550 in administrative penalties with \$2,310 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aguado Stone Incorporated, Docket No. 2007-1667-WQ-E on June 10, 2008 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rising Star, Docket No. 2007-1728-WQ-E on June 10, 2008 assessing \$2,700 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Streetman, Docket No. 2007-1729-MWD-E on June 10, 2008 assessing \$4,805 in administrative penalties with \$961 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2007-1730-AIR-E on June 10, 2008 assessing \$26,225 in administrative penalties with \$5,245 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Plant Food Corporation, Docket No. 2007-1732-WQ-E on June 10, 2008 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe Johnson dba B & J Sand and Gravel, Docket No. 2007-1754-WQ-E on June 10, 2008 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2007-1756-AIR-E on June 10, 2008 assessing \$44,450 in administrative penalties with \$8,890 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anjum Investments, L.P. dba Star Travel Plaza, Docket No. 2007-1757-PST-E on June 10, 2008 assessing \$11,600 in administrative penalties with \$2,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Waco, Docket No. 2007-1758-PWS-E on June 10, 2008 assessing \$322 in administrative penalties with \$64 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy Doan, Docket No. 2007-1759-PST-E on June 10, 2008 assessing \$10,500 in administrative penalties with \$2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patrick Y. Shin dba Douglas Cleaners, Docket No. 2007-1780-DCL-E on June 10, 2008 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastman Chemical Company, Docket No. 2007-1787-AIR-E on June 10, 2008 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mae Dell Tondre dba Tondre Water System, Docket No. 2007-1824-PWS-E on June 10, 2008 assessing \$1,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Katy Sun Parks, Ltd., Docket No. 2007-1834-PWS-E on June 10, 2008 assessing \$3,350 in administrative penalties with \$670 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation dba Mobil Chemical Company, Docket No. 2007-1840-IWD-E on June 10, 2008 assessing \$5,740 in administrative penalties with \$1,148 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zam, Inc. dba Circle A Grocery, Docket No. 2007-1846-PST-E on June 10, 2008 assessing \$12,500 in administrative penalties with \$2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Primarily Primates, Docket No. 2007-1859-WQ-E on June 10, 2008 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2007-1861-AIR-E on June 10, 2008 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell Chemical Company, Docket No. 2007-1866-AIR-E on June 10, 2008 assessing \$10,200 in administrative penalties with \$2,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amy Investment Inc. dba Corner Stop, Docket No. 2007-1870-PST-E on June 10, 2008 assessing \$1,940 in administrative penalties with \$388 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZZQ Enterprises, Inc. dba Mini Mart Food Store FFP 3840, Docket No. 2007-1887-PST-E on June 10, 2008 assessing \$4,725 in administrative penalties with \$945 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest-Tex Leasing Co., Inc., Docket No. 2007-1899-AIR-E on June 10, 2008 assessing \$1,020 in administrative penalties with \$204 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso County, Docket No. 2007-1917-AIR-E on June 10, 2008 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Avis Rent A Car System, LLC, Docket No. 2007-1925-AIR-E on June 10, 2008 assessing \$1,170 in administrative penalties with \$234 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wyler Industrial Works, Inc., Docket No. 2007-1937-AIR-E on June 10, 2008 assessing \$920 in administrative penalties with \$184 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Needville, Docket No. 2007-1955-MWD-E on June 10, 2008 assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amerrock Products, LP, Docket No. 2007-1962-AIR-E on June 10, 2008 assessing \$3,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dale M. Sommerfeld, Docket No. 2007-2003-LII-E on June 10, 2008 assessing \$250 in administrative penalties with \$50 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hooks Mobile Home Park, Ltd., Docket No. 2007-2020-MWD-E on June 10, 2008 assessing \$1,650 in administrative penalties with \$330 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Alba, Docket No. 2008-0012-MWD-E on June 10, 2008 assessing \$8,000 in administrative penalties with \$1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2008-0014-AIR-E on June 10, 2008 assessing \$10,270 in administrative penalties with \$2,054 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AAA Sanitation, Inc., Docket No. 2008-0137-SLG-E on June 10, 2008 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Last Chance Drive In, Docket No. 2006-0927-PST-E on June 10, 2008 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Signature Flight Support Corporation, Docket No. 2008-0027-WQ-E on June 10, 2008 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Granite Construction Company, Docket No. 2008-0032-WR-E on June 10, 2008 assessing \$350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Palo Gaucho, Inc., Docket No. 2006-2025-MWD-E on June 6, 2008 assessing \$9,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary E. Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gregg Dentler & Hugh Doug Dentler dba Dentlers Tire Shop, Docket No. 2005-1052-MSW-E on June 11, 2008 assessing \$17,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Twin Lakes Enterprises, Inc. dba Houston Discount Cleaners and dba 1.25 Dry Clean Super Center, Docket No. 2006-1163-DCL-E on June 6, 2008 assessing \$2,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-6501, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200803154

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 18, 2008



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 28, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 28, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Ayers' Companies, Inc. dba County Line Truck Stop; DOCKET NUMBER: 2004-0821-PST-E; TCEQ ID NUMBERS: 16431 and RN102430907; LOCATION: 780 East Highway 80, Sunnyvale, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board (CARB) executive order and free of any defects that would impair the effectiveness of the system; 30 TAC §115.242(5) and THSC, §382.085(b), by failing to make all necessary repairs, replacements, or adjustments to faulty equipment; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment by performing operational tests at least once every 12 months or upon major system replacement or modification, whichever occurs first; 30 TAC §334.8(c)(5)(C), by failing to properly label the underground storage tank (UST) fill pipes according to the UST information provided to

the TCEQ on the station's UST registration and self-certification form; 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection within three to six months after installation and once every three years thereafter; 30 TAC §334.54(d)(2), by failing to ensure that a regulated substance has been removed from a UST to a depth of less than 2.5 centimeters or 0.3% by weight of the system at full capacity in order to qualify as an out-of-service tank; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test a line leak detector at least once per year for performance and operational reliability; 30 TAC §334.50(d)(9)(A)(v) and TWC, §26.3475(c), by failing to report to the TCEQ within 72 hours of the receipt of any inconclusive statistical inventory reconciliation (SIR) analysis report for USTs; PENALTY: \$8,740; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Betty Brown; DOCKET NUMBER: 2005-1856-MLM-E; TCEQ ID NUMBER: RN101976926; LOCATION: 6941 South United States Highway 277, San Angelo, Tom Green County, Texas; TYPE OF FACILITY: pipe and supplies sales facility; RULES VIOLATED: 30 TAC §111.201 and §111.219(7) and THSC, §382.085(b), by failing to comply with the general prohibition of outdoor burning in Texas by conducting the unauthorized burning of municipal solid waste, as documented during an investigation conducted on September 7, 2005; 30 TAC §335.4 and §330.5(c), by failing to prevent the unauthorized collection, handling, storage, or disposal of industrial hazardous and municipal solid waste, as documented during an investigation conducted on September 7, 2005; PENALTY: \$6,000; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: David P. Derdeyn; DOCKET NUMBER: 2007-0848-WOC-E; TCEQ ID NUMBER: RN103856449; LOCATION: 509 Tejas Road, Jefferson, Marion County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §30.381(b) and §30.5(a) and TWC, §37.003, by failing to obtain a valid public water system operator license prior to performing process duties in the production, treatment, and distribution of public drinking water, as documented on March 13, 2007; PENALTY: \$1,875; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Dolores A. Luke dba Little Big Horn Services; DOCKET NUMBER: 2007-0743-MLM-E; TCEQ ID NUMBER: RN101228740; LOCATION: 9700 Little Big Horn Drive, about five miles North of Silbee, Hardin County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §288.20, by failing to develop and maintain a drought contingency plan for the public water supply, as documented on February 13, 2007; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that will be used to comply with the monitoring requirements as documented on February 13, 2007; 30 TAC §290.42(1), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference, as documented on February 13, 2007; 30 TAC §290.42(j), by failing to maintain an American National Standards Institute/National Sanitation Foundation (ANSI/NSF) certification for all chemical additives used at the water supply, as documented on February 13, 2007; 30 TAC §290.46(n)(2), by failing to develop and maintain an accurate and up-to-date map

of the distribution system so that all valves and mains can be easily located in an emergency, as documented on February 13, 2007; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a minimum chlorine residual of 0.2 milligrams per liter (mg/L) of free chlorine throughout the distribution system at all times, as documented on February 13, 2007 and February 22, 2007; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block for the water system's well that extends a minimum of three feet from the well head in all directions, as documented on February 13, 2007; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage, and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition, as documented on February 13, 2007; 30 TAC §290.45(b)(1)(A)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity of 1.5 gallons per minute (gpm) per connection, as documented on February 13, 2007; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 50 gallons per connection, as documented on February 13, 2007; 30 TAC §290.46(f)(2) and (3), by failing to maintain the water system's operational records and make those records available to commission personnel at the time of the February 13, 2007 investigation; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to remit all Public Health Service (PHS) annual and late fees to the commission in a timely manner as documented during a record review conducted on April 25, 2007; PENALTY: \$1,730; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: E.I. Du Pont De Nemours and Company dba Du Pont Sabine River Works; DOCKET NUMBER: 2004-1135-MLM-E; TCEQ ID NUMBER: RN100542711; LOCATION: 3055 Farm-to-Market Road 1006, Orange, Orange County, Texas; TYPE OF FACILITY: chemical manufacturing plant with a public water system; RULES VIOLATED: 30 TAC §116.115(b)(2)(F); TCEQ Air Permit Numbers 9176 and 20204, Maximum Allowable Emission Rate Table (MAERT); and THSC, §382.085(b), by failing to comply with an emissions limitation by allowing 11 unauthorized emissions events; 30 TAC §116.115(b)(2)(F); TCEQ Air Permit Number 914, MAERT; and THSC, §382.085(b), by failing to comply with an emissions limitation on June 25, 2003 from 12:28 to 12:37 hours when a Plant wide incident caused an electrical upset resulting in equipment shutdowns which caused several reportable emissions events including the release of 49,050 pounds of propylene from the Propylene Feed Header, Emissions Point Number (EPN) DA01401; 30 TAC §101.201(a)(1) and (1)(B) and (b)(4); and THSC, §382.085(b), by failing to properly notify the TCEQ regional office of reportable emissions events; 30 TAC §101.201(a)(1) and (1)(B); and THSC, §382.085(b), by failing to notify the TCEQ regional office of two reportable emissions events within 24 hours; 30 TAC §116.115(b)(2)(F) and (c); TCEQ Air Permit Number 1790, Special Condition Number 1, MAERT; and THSC, §382.085(b), by failing to maintain an emission rate below the MAERT limits; 30 TAC §117.207(a); and THSC, §382.085(b), by failing to maintain an emission rate below the allowable plant wide oxides of nitrogen (NO_x) limit; 30 TAC §§101.20(1) and (2), 111.111(a)(4)(A) and 115.115(b)(2)(F); TCEQ Air Permit Number 914, Special Conditions Numbers 1, 2 and 4; and THSC, §382.085(b), by failing to maintain an emissions rate below the allowable emission limit; 30 TAC §§101.20(1) and (2), 111.111(a)(4)(A), 113.110 and 116.115(c); TCEQ Air Permit Number 1302, Special Condition Number 2; 40 Code of Federal Regulations (CFR) §60.112b(a)(3)(ii) and §61.349(a)(2)(ii); and THSC, §382.085(b), by failing to properly operate a flare; 30 TAC §116.115(b)(2)(F); and THSC, §382.085(b), by failing to comply with an emissions limitation; 30 TAC §111.111(a)(4)(A) and §116.115(b)(2)(F) and (c); TCEQ Air Permit Numbers 1302, 1790,

and 9629, General Condition MAERT; and THSC, §382.085(b), by failing to maintain emission rate below the permitted limit; 30 TAC §101.201(a)(1)(B), (2)(H), (b)(4) and (7); and THSC, §382.085(b), by failing to include all required information on the final report of an emissions event; 30 TAC §101.201(a)(2)(H), (b)(4) and (7) and THSC, §382.085(b), by failing to include all required information on the final reports of emissions events; 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by exceeding the Maximum Contaminant Level of 0.060 milligrams per liter (mg/L) based on a running annual average for haloacetic acids (HAA5) during the First Quarter 2004; 30 TAC §116.115(b)(2)(F) and (c) and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; 30 TAC §116.115(b)(2)(F); TCEQ Air Permit Number 9176, Emission Standard Number 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B), and THSC, §382.085(b), by failing to properly notify the TCEQ regional office of a reportable emissions event with 24 hours; 30 TAC §101.201(b)(7) and (8), and THSC, §382.085(b), by failing to comply with the final record requirements for an emissions event; 30 TAC §116.115(b)(2) and (2)(F); TCEQ Air Permit Number 1302, General Condition No. 8; and THSC, §382.085(b), by failing to maintain an emission rate limit; 30 TAC §116.115(b)(2)(F); TCEQ Permit Number 20204, Special Condition 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(2)(H) and (b)(4) and THSC, §382.085(b), by failing to properly identify the authorized emissions limits for the compounds released during an emissions event occurring November 28 - 30, 2003; 30 TAC §116.115(b); TCEQ Air Permit Number 1302, General Condition B MAERT; and THSC, §382.085(b), by failing to properly report an emissions event that began on November 28, 2003; THSC, §382.085(b), by failing to prevent the release of unauthorized emissions at the D-Unit; 30 TAC §§101.20(2), 111.111(a)(4)(A) and 116.115(b)(2)(F) and (c); TCEQ Air Permit Number 914 Special Conditions Numbers 1, 2, and 4; 40 CFR §61.349(a)(2)(iii); and THSC, §382.085(b), by failing to maintain an emissions rate below the authorized emission rate for an emissions event that occurred on October 20, 2003; 30 TAC §115.352(2) and §116.115(c); TCEQ Air Permit Number 914 Special Condition Number 15.I; and THSC, §382.085(b), by failing to repair 72 components (valves) in volatile organic compound (VOC) service during the April 23 - May 27, 2003 shutdown; 30 TAC §113.110 and THSC, §382.085(b), by failing to use an approved United States Environmental Protection Agency (EPA) method to determine the concentration of substances in the cooling water of the Adiponitrile (ADN) unit; 30 TAC §305.125(1); TCEQ Water Quality Permit Number 00475, Texas Pollutant Discharge Elimination System (TPDES) Permit Number 00475 Effluent Limitations and Monitoring Requirement Number 1; and National Pollutant Discharge Elimination System (NPDES) Permit Number TX0006327, by failing to comply with effluent limits for outfalls 101A and 201A; and TWC, §26.121(a); and NPDES Permit Number TX0006327, Effluent Limitations and Monitoring Requirements, by failing to comply with the permit limit for pH range excursions for more than 60 minutes at outfall 001; PENALTY: \$176,575; Supplemental Environmental Project offset amount of \$88,287 applied to Ducks Unlimited; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Fincher Brothers, Inc.; DOCKET NUMBER: 2004-1989-WQ-E; TCEQ ID NUMBER: RN104319249; LOCATION: 5500 Jessica Lane, Mansfield, Tarrant County, Texas; TYPE OF FACILITY: sand quarry; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit; PENALTY: \$7,350;

STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: John Popma dba Marketing Interface Company; DOCKET NUMBER: 2004-0083-IHW-E; TCEQ ID NUMBERS: 37333 and RN103146049; LOCATION: East Mountain Road and Municipal Drive in East Mountain, Upshur County, Texas; TYPE OF FACILITY: facility that refurbishes and resells electroplating equipment; RULES VIOLATED: 30 TAC §§335.62, 335.431(c), 335.503(a)(4), and 335.513, by failing to complete waste classification, hazardous waste determination, and land disposal restrictions on each solid waste generated; 30 TAC §335.6(c), by failing to update the Facility's Notice of Registration (NOR) and thereby notify the executive director of the generation of hazardous waste; 30 TAC §335.2(b) and §335.10(a), by failing to properly manifest, transport, and dispose of industrial hazardous waste at a permitted facility; 30 TAC §335.9(a)(1), by failing to maintain records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of onsite or shipped offsite for storage, processing, or disposal; 30 TAC §§335.474, 335.479, and 336.69(a)(4)(A), and 40 CFR §265.16 and 40 CFR Part 265, Subchapter D, by failing to maintain records that document personnel training activities, a contingency plan and a pollution prevention plan; PENALTY: \$4,254; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Lajuna, Inc.; F.A.H.U. Inc.; and Hugo Estrada; DOCKET NUMBER: 2001-0713-PST-E; TCEQ ID NUMBER: RN101746683; LOCATION: 3013 5th Street, Stafford, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(9) and THSC, §382.085(b), by failing to conspicuously post operating instructions on the front of each dispenser located at the station which is equipped with a Stage II vapor recovery system; 30 TAC §115.246(4) and THSC, §382.085(b), by failing to maintain and provide documentation at the station showing attendance and completion of Stage II training for each trained employee or representative; 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily inspections of the Stage II vapor recovery system; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system; 30 TAC §115.246(3) and THSC, §382.085(b), by failing to maintain a record of all maintenance performed on the Stage II vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct annual pressure decay testing on the Stage II vapor recovery system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to conduct monthly monitoring of the UST piping system; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test and inspect the line leak detectors connected to the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate the required financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of USTs; and 30 TAC §334.7(d)(3), by failing to amend, update, or change the UST registration information in order to reflect current release detection information within 30 days of the date on which the owner and/or operator became aware of the change or addition; PENALTY: \$600; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(9) COMPANY: Newell Recycling of San Antonio, L.P., Newell Recycling Co., Inc., Newell LTD., Newell Enterprises, Inc., Newell Products, Inc., and Newell International, Inc.; DOCKET NUMBER: 2004-0014-MLM-E; TCEQ ID NUMBERS: BG-0149-O; 30060; BG-0147-S; 38632; BG-0293-G; BG-1092-L; RN102923976 and RN102601804; LOCATION: 726 Probandt Street and 501 Steves Avenue, San Antonio, Bexar County, Texas; TYPE OF FACILITY: scrap metal shredding and recycling, shredder residue reclamation, metal sorting, lead battery recovery; RULES VIOLATED: 30 TAC §335.4, by allowing the collection, storage, handling, processing or disposal of industrial solid waste in such a manner as to cause a discharge or the imminent threat of a discharge into or adjacent to water in the state, the creation and maintenance of a nuisance, and/or the endangerment of the public health and welfare; TWC, §26.121, by discharging "other" waste and/or "industrial" waste into or adjacent to water in the state and/or engaging in activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of water in the state; 30 TAC §101.4, by discharging air contaminants that are or may tend to be injurious to or to adversely affect human health or welfare and property, and which interfere with the normal use and enjoyment of property; THSC, §382.085(a) and (b), by emitting air contaminants or performing other activities that have caused or contributed to air pollution and by emitting air contaminants or performing other activities in violation of commission rules; TCEQ Order Docket Number 1998-0235-MLM-E, Provision IV.B.1, by releasing visible emissions from the shredder in excess of 5% opacity for any six-minute period; and TWC, §26.121, by discharging industrial solid waste into or adjacent to the waters in the state; PENALTY: \$85,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Parker County's Squaw Creek Downs, L.P.; DOCKET NUMBER: 2003-1240-MLM-E; TCEQ ID NUMBER: RN103005526; LOCATION: 130 Trinity Meadows Lane, Willow Park, Parker County, Texas; TYPE OF FACILITY: horse racing and stable service operation; RULES VIOLATED: TWC, §26.121(a), by causing an unauthorized sewage discharge from its sewer system; 30 TAC §321.47(b)(3), by failing to construct and manage waste control facilities and land application areas to protect surface and groundwater and prevent nuisance conditions; and 30 TAC §111.201, by conducting unauthorized outdoor burning of waste; PENALTY: \$5,350; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Southwood Estates, Inc.; DOCKET NUMBER: 2001-1422-MWD-E; TCEQ ID NUMBER: 12780-001; LOCATION: approximately 1900 feet north of State Highway 6 and two miles east of the intersection of State Highway 6 and State Highway 288 near Manvel, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: TCEQ Agreed Order, Docket Number 1998-0219-MWD-E, Ordering Provisions 2.c.-2.g., by failing to properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the permit conditions; 30 TAC §305.125(1) and (5), by failing to prevent the unauthorized discharge of wastewater from the northwest corner of the aeration basin; 30 TAC §305.125(1) and §319.7(d), and TPDES Permit Number 12780-001, Monitoring and Reporting Requirements 1, by failing to submit discharge monitoring reports by the 20th day of the following month; and 30 TAC §305.125(1), and TPDES Permit Number 12780-001, Requirements Applying to All Sewage Sludge Disposed in a Municipal Solid Waste Landfill G, by failing to submit an annual sludge report; and 30 TAC §305.125(1), by

failing to comply with permitted effluent limits; PENALTY: \$72,000; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200803113

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 17, 2008



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 28, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 28, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Elton W. Thompson dba Peterson Place Subdivision Water System; DOCKET NUMBER: 2004-0320-PWS-E; TCEQ ID NUMBER: 101199339; LOCATION: 2732 County Road 603, Dayton, Liberty County, Texas; TYPE OF FACILITY: operates, for compensation, equipment and facilities, for the transmission, storage, distribution, sale or provision of potable water to the public; RULES VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to meet the TCEQ Minimum Water System Capacity Requirements of a well capacity of 1.5 gallons per minute production (gpm); 30 TAC §291.101(a) and Texas Water Code (TWC), §13.242(a), by failing to obtain from the TCEQ a Certificate of Public Convenience and Necessity (CCN); 30 TAC §290.109(c)(2) and §290.122 and THSC, §341.033(d), by failing to collect bacteriological samples and provide public notice

of the violations; 30 TAC §290.46(m), by failing to ensure that the maintenance and housekeeping practices used by the facility ensured the good working condition for the facility equipment; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each service connection to provide water usage data; 30 TAC §290.43(d)(2) and §290.45(b)(1)(A)(iii) and THSC, §341.0315(c), by failing to meet the TCEQ's Minimum Water System Capacity Requirements of a pressure tank capacity of 50 gallons per connection PENALTY: \$8,327; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Esperanza Carrasco dba El Pabellon; DOCKET NUMBER: 2004-0402-PST-E; TCEQ ID NUMBER: RN102429632; LOCATION: Highway 67 and Harrington, Presidio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to have a release detection method capable of detecting a release from any portion of the USTs which contain regulated substances; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the USTs with an identification number listed on the underground storage tank (UST) registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i), by failing to make available a valid current TCEQ Fuel Delivery Certificate to a common carrier prior to receiving fuel deliveries from April 1 - October 22, 2003; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to reconcile the inventory control records on a monthly basis which are sufficiently accurate to detect a release as small as the sum of 1% of the total substance flow-through for the month plus 130 gallons; PENALTY: \$56,500; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Hadi H. Jinnah dba Dairy Mart 2; DOCKET NUMBER: 2004-0625-PST-E; TCEQ ID NUMBER: RN102473907; LOCATION: 5112 West Davis Street, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and (iii)(I); TWC, §26.3475(a), by failing to meet the release detection requirements for the UST system; 30 TAC §334.10(b)(1)(B), by failing to maintain in a secure location on the premises of the UST facility legible copies of all required records pertaining to an UST system immediately accessible for reference and use by the UST system operator, and immediately available for inspection upon request by agency personnel; PENALTY: \$8,840; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: James Jennings dba Jennings Conoco & Auto; DOCKET NUMBER: 2004-1977-PST-E; TCEQ ID NUMBER: RN102047487; LOCATION: 901 Hall Avenue, Littlefield, Lamb County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$950; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

(5) COMPANY: Oldmoe, Inc. dba Time Saver Grocery; DOCKET NUMBER: 2004-0536-PST-E; TCEQ ID NUMBERS: 40316 and RN101790608; LOCATION: 13712 Walters Road, Houston, Harris

County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §§334.74(2)(A), 334.77(b), 334.78, 334.80(a)(3) and (4), and TWC, §26.121(a), by failing to prevent an unauthorized discharge of hydrocarbons into or adjacent to waters of the state, and failing to conduct release investigation and confirmation steps, the initial abatement steps, site assessment, and corrective action activities; and 30 TAC §334.72(1) and §334.76(1), by failing to report a release to the agency within 24 hours of discovery; PENALTY: \$13,500; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200803112

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 17, 2008



Notice of Radioactive Material License

The following notice was issued on June 11, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, TX 78711-3087, WITHIN 10 DAYS FROM THE DATE THIS NOTICE IS PUBLISHED IN THE *TEXAS REGISTER* WHICH IS JUNE 27, 2008.

INFORMATION SECTION

NOTICE OF MINOR AMENDMENT OF RADIOACTIVE MATERIAL LICENSE NO. R01811

Nuclear Sources & Services, Inc., P.O. Box 34042, Houston, TX 77234, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment of Radioactive Material License No. R01811 which authorizes radioactive waste processing and storage. The amendment application request 1) changes the syntax and references to reflect the change from being licensed by the Department of State Health Services (DSHS) to TCEQ, 2) removes the Administrative Renewal conditions (which is not required for TCEQ licenses), and 3) adds a condition requiring fingerprinting and criminal history records check requirements for unescorted access to certain radioactive material as mandated by Nuclear Regulatory Commission (NRC) order EA-07-305. The facility is located at 5711 Etheridge, Houston, in Harris County, Texas. The application was submitted to the TCEQ on March 24, 2008. The TCEQ Executive Director has completed the technical review of the amendment request and prepared an amended draft license. The draft license 1) changes the authority of the license and its format from the DSHS to the TCEQ, 2) removes the administrative renewal conditions, 3) imposes fingerprinting and criminal history records check requirements for unescorted access to certain radioactive material, 4) adds extra conditions required for all TCEQ permits as stated in Title 30 of the Texas Administrative Code (TAC) §305.125, and 5) changes references to Title 25 TAC Chapter 289 to the corresponding reference in Title 30 TAC Chapter 336, except for transportation of radioactive material, which remains in 25 TAC Chapter 289. The license amendment request, the Executive Director's technical summary, and amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Mancuso Public Library, 6767 Bellfort, Houston, TX 77087.

PUBLIC COMMENT / PUBLIC MEETING

You may submit public comments or request a public meeting about this application.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant material or significant public comments.

EXECUTIVE DIRECTOR ACTION

The Executive Director may issue final approval of the minor amendment after consideration of all timely comments submitted on the application.

MAILING LIST

If you submit public comments, you will be added to the mailing list for this specific license to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 10 days from the date this notice is published in the *Texas Register* which is June 27, 2008.

AGENCY CONTACTS AND INFORMATION

If you need more information about this license application or the licensing process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from Nuclear Sources and Services, Inc. at the address stated above or by contacting Sal Benavidez at (713) 641-0391.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200803153

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 18, 2008



Notice of Water Quality Applications

The following notices were issued during the period of June 5, 2008 through June 12, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AQUA DEVELOPMENT INC. has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit WQ0014279001 issued to Aqua Development, Inc. to remove Other Requirements provision number six on page 23 of the existing permit, which is in regards to daily operator inspection of the facility. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 1.10 miles north of the intersection of State Highway 288 and Farm-to-Market Road 1462 in Brazoria County, Texas.

CITY OF HOUSTON has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit WQ0010495149 to authorize sludge transport to the City of Houston Wastewater Treatment Facilities. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 1,100 feet north of Hamblen Road, approximately 2,750 feet east of the intersection of U.S. Highway 59 and State Highway 494, and 4,400 feet south of the Montgomery-Harris County Line in Harris County, Texas.

CITY OF THREE RIVERS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010301002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located approximately 4,400 feet north from the intersection of State Highway 72 and Avenida Guadalupe to its terminus and adjacent to the Union Pacific railroad in Live Oak County, Texas.

GEO SPECIALTY CHEMICALS INC which operates the Deer Park Site plant, an organic chemicals manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0002558000 to authorize the modification of hexachlorobenzene (HCB) single grab limit to match the minimum analytical limit and removal of the daily average and daily maximum effluent loading limits, reduction of the monitoring frequencies for biochemical oxygen demand (5-day), ammonia nitrogen, and total suspended solids from twice per week to once per week, reduction of the monitoring frequency for oil and grease from twice per week to twice per month, reduction of the monitoring frequency for total cyanide from twice per month to once per month, reduction of the monitoring frequency for biomonitoring from once per six month to once per year and quarterly biomonitoring to twice per year, authorization of the discharge of water softener regeneration backwash and sand filter blowdown streams via Outfall 002, addition of new permit condition stating that analytical results that are below the minimum analytical limits can be reported as zero on the Discharge Monitoring Report, to modify discharge via Outfall 002 to require visual check for the presence of visible oil or sheen, and the removal of yearly monitoring requirements for total phosphorus at Outfalls 001 and 002. The current permit authorizes the discharge of treated process wastewater, domestic wastewater, cooling tower blowdown, boiler blowdown, and water softener regeneration at a daily average flow not to exceed 50,000 gallons per day via Outfall 001; and stormwater runoff and utility wastewaters from the nitroparaffins (cooling tower blowdown, boiler blowdown, and spray-down of the cooling tower) on an intermittent and flow variable basis via Outfall 002. The facility is located on the west side of State Highway 134 (Battleground Road), approximately one mile north of the intersection of State Highway 134 and State Highway 225 (Pasadena Highway) in the City of Deer Park, Harris County, Texas.

GEORGIA GULF CHEMICALS AND VINYLs LLC which operates the Pasadena Plant, an organic chemical manufacturing plant that produces cumene, phenol, and acetone as its primary products, has applied for a renewal of TPDES Permit No. WQ0002067000 which authorizes

the discharge of cooling tower blowdown, boiler blowdown, steam system blowdown, and storm water at a daily maximum flow not to exceed 320,000 gallons per day via current Outfall 001; cooling tower blowdown, boiler blowdown, steam system blowdown, and storm water at a daily maximum dry weather flow not to exceed 320,000 gallons per day via new Outfall 001 (upon commingling of Outfalls 001, 002, and 003); storm water on an intermittent and flow variable basis via Outfall 002; storm water from the dock area on an intermittent and flow variable basis via Outfall 003; treated process wastewater, utility waters, and treated domestic sewage at a daily average flow not to exceed 450,000 gallons per day via Outfall 004; cooling tower blowdown, steam condensate, and storm water from a lay-down yard at a daily maximum dry weather flow not to exceed 500,000 gallons per day via Outfall 005; and storm water on an intermittent and flow variable basis via Outfall 006. The facility is located at 3503 Pasadena Freeway, on the south bank of the Houston Ship Channel, approximately 7,500 feet north of State Highway 225 in the City of Pasadena, Harris County, Texas.

GULF COAST UTILITY CO INC has applied for a renewal of TPDES Permit No. WQ0012780001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 1,900 feet north of State Highway 6 and 2 miles west of the intersection of State Highway 6 and State Highway 288 in Brazoria County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 148 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011818003, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility will be located 1,400 feet south of the intersection of Greensbrook Forest Drive and Greenspark Lane, 2,800 feet west of Lockwood Road in Harris County, Texas.

H&R REALTY INVESTMENTS LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0012680001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 3318 County Road 89, approximately 1 1/3 miles southwest of the intersection of Farm-to-Market Road 1128 and Farm-to-Market Road 518 in Brazoria County Texas.

ORBIT SYSTEMS INC has applied for a renewal of TPDES Permit No. WQ0012113001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 7132 Green Tree Drive, approximately 0.5 miles west of State Highway 288, and approximately 3.5 miles north of the City of Angleton in Brazoria County, Texas.

PALMER PLANTATION MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0012937001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 6,000 feet south-southeast of the intersection of State Highway 6 and Senior Road, 2.2 miles southeast of the intersection of State Highway 6 and Farm-to-Market Road 1092 (Stafford-De Walt Road), south of the City of Missouri City in Fort Bend County, Texas.

STEPHEN F. AUSTIN STATE UNIVERSITY has applied for a renewal of TPDES Permit No. WQ0013161001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 336 County Road 473 and approximately 5,000 feet south-southwest of the intersection of Farm-to-Market Roads 705 and 3127 in San Augustine County, Texas.

VOPAK LOGISTICS SERVICES which operates the Vopak Logistics Services USA Inc. plant, a rail car/tank truck cleaning operation and

commercial waste disposal facility, has applied for a renewal of TPDES Permit No. WQ0001731000, which authorizes the discharge of treated process wastewater, treated domestic wastewater and storm water at a daily average flow not to exceed 300,000 gallons per day via Outfall 001. The facility is located at 2759 Battleground Road in the City of Deer Park, Harris County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

VOPAK TERMINAL DEER PARK INC which operates a bulk liquid storage transshipment terminal, has applied for a renewal of TPDES Permit No. WQ0002383000, which authorizes the discharge of stormwater on an intermittent and flow variable basis. The facility is located at 2759 Battleground Road (State Hwy. 134) in the City of Deer Park, Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200803152

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 18, 2008

Department of State Health Services

Notice of Planned Changes in the Special Supplemental Nutrition Program for Women, Infants and Children

The Department of State Health Services (department), as administrator for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), is soliciting information on the impact to businesses or persons of the planned changes to the WIC Program's food packages.

The WIC Program operates under federal guidelines issued by the United States Department of Agriculture (USDA). USDA revisions to the WIC food packages were published in the *Federal Register* by an interim final rule December 6, 2007. While most of the revisions are mandatory, the department has some discretion in the implementation of the new food packages.

The department is considering the following changes to the WIC foods which will be implemented August 1, 2009:

- choosing not to offer sardines and mackerel in the fish category, but offering tuna and salmon;

- choosing not to offer dried fruits and vegetables in the fruits and vegetables category, but offering fresh, frozen, and canned fruits and vegetables; and

- choosing not to offer bulgur and barley in the whole grain category, but offering corn and whole wheat tortillas and brown rice.

Businesses or persons who anticipate an adverse economic impact as a result of these choices may provide the department with information by describing the financial impact, including one-time costs and on-going annual costs. In addition, businesses should identify themselves by Type as follows: Type 1 (for-profit, independently owned and operated, and fewer than 21 employees); Type 2 (for-profit, independently

owned and operated, fewer than 100 employees or less than \$6 million in annual gross receipts); or Type 3 (Not Type 1 or 2).

Information may be submitted by letter to Valerie Wolfe, Policy Coordinator, Nutrition Services Section, Mail Code 1933, 1100 West 49th Street, Austin, Texas 78756 or by email to Valerie.Wolfe@dshs.state.tx.us or by fax to (512) 458-7746, Attention: Valerie Wolfe. Responses must be received by 5:00 p.m. Central Daylight Saving Time, on July 18, 2008.

TRD-200803102

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: June 17, 2008

Texas Department of Housing and Community Affairs

Request for Proposals for Bond/Securities Disclosure Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Services Division, is issuing a Request for Proposals (RFP) for outside Bond/Securities Disclosure Counsel. Bond/Securities Disclosure Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m., Central Daylight Saving Time, Friday, July 11, 2008. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Mr. Kevin Hamby, General Counsel, at (512) 475-3948, 221 East 11th Street, Austin Texas 78701 or visit our website at www.tdhca.state.tx.us, for a complete copy of the RFP. Communication with any member of the board, the executive director, or TDHCA staff other than Mr. Hamby or his assistant, concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200803148

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 18, 2008

Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation proposed amendments to 28 TAC §134.402, concerning Ambu-

latory Surgical Center Fee Guideline, for publication in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4614).

The preamble to the proposed amendment contains the following errors as submitted by the Division.

On page 4618, right column, 4th paragraph, last sentence, the word "employee's" should be plural to read "employees'."

The sentence should read as follows: "This concept is replicated in the proposed amended ASC reimbursement methodologies to assure that costs of implantable devices are not a barrier to injured employees' access to services in an ASC facility setting."

On page 4621, right column, 2nd paragraph, last sentence, the word "with" was left out of the first part of the sentence.

The sentence should read as follows: "Therefore, even though ASC facility reimbursement rates are proposed to be increased, with the relatively small ASC volume combined with possible net savings from relocation of services to the less costly ASC setting, it is unlikely that premium costs will be negatively impacted in any significant amount."

TRD-200803155

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 1051 "\$75,000 Casino"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1051 is "\$75,000 CASINO". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1051 shall be \$7.00 per ticket.

1.2 Definitions in Instant Game No. 1051.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 10X SYMBOL, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$2,000, and \$75,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1051 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
10X SYMBOL	WINX10
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$75,000	75 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$75,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1051), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1051-0000001-001.

K. Pack - A pack of "\$75,000 CASINO" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of 001 and front 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$75,000 CASINO" Instant Game No. 1051 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$75,000 CASINO" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a 10X SYMBOL, the player wins 10 (ten) TIMES the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

- B. The "10X" (10 times multiplier) play symbol will only appear once on intended winning tickets and only as dictated by the prize structure.
- C. No five or more matching non-winning prize symbols will appear on a ticket.
- D. No duplicate WINNING NUMBERS play symbols on a ticket.
- E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
- F. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 20 and \$20).
- H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$75,000 CASINO" Instant Game prize of \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$75,000 CASINO" Instant Game prize of \$2,000 or \$75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$75,000 CASINO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

- 1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
- 2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$75,000 CASINO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$75,000 CASINO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1051. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1051 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	672,000	7.50
\$15	268,800	18.75
\$20	218,400	23.08
\$50	67,200	75.00
\$100	35,616	141.51
\$500	2,016	2,500.00
\$2,000	95	53,052.63
\$75,000	10	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1051 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1051, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200803123

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 18, 2008



Instant Game Number 1077 "Boot Scootin' Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1077 is "BOOT SCOOTIN' BUCKS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1077 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1077.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, FREE SYMBOL, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$50.00 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1077 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
FREE SYMBOL	TICKET
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$6.00	SIX\$
\$10.00	TEN\$
\$50.00	FIFTY
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$5.00, \$6.00, \$10.00 or TX TWO STEP \$1 TKT.

G. Mid-Tier Prize - A prize of \$50.00.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1077), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1077-0000001-001.

K. Pack - A pack of "BOOT SCOOTIN' BUCKS" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BOOT SCOOTIN' BUCKS" Instant Game No. 1077 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BOOT SCOOTIN' BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If winning prize symbol is "FREE", the player wins free \$1 Texas Two Step® Quick Pick ticket. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on

file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).

2.3 Procedure for Claiming Prizes.

A. To claim a "BOOT SCOOTIN' BUCKS" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$6.00, \$10.00, TX TWO STEP \$1 TKT or \$50.00, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BOOT SCOOTIN' BUCKS" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service

(IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BOOT SCOOTIN' BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BOOT

SCOOTIN' BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BOOT SCOOTIN' BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,920,000 tickets in the Instant Game No. 1077. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1077 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
TX Two Step \$1 Tkt	1,742,400	4.55
\$1	739,200	10.71
\$2	633,600	12.50
\$3	316,800	25.00
\$5	105,600	75.00
\$6	52,800	150.00
\$10	39,600	200.00
\$50	7,689	1,030.04
\$1,000	170	46,588.24

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.18. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1077 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1077, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200803054

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 13, 2008



Instant Game Number 1078 "Mucho Dinero"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1078 is "MUCHO DINERO". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1078 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1078.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, STAR SYMBOL, DOLLAR BILL SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$2,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1078 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
STAR SYMBOL	AUTO
DOLLAR BILL SYMBOL	WINALL
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1078), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1078-0000001-001.

K. Pack - A pack of "MUCHO DINERO" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back

of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MUCHO DINERO" Instant Game No. 1078 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MUCHO DINERO" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either MUCHO DINERO NUMBER play symbol, the player wins PRIZE for that number. If a player reveals a "STAR" play symbol, the player wins the PRIZE shown for that symbol instantly! If a player reveals a "DOLLAR BILL" play symbol, the player WINS ALL 10 PRIZES! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No duplicate MUCHO DINERO NUMBERS play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. The "STAR" (auto win) play symbol will only appear once on a ticket.

G. The "DOLLAR BILL" (win all) play symbol will only appear as dictated by the prize structure.

H. When the "DOLLAR BILL" (win all) play symbol appears, there will be no occurrence of any of YOUR NUMBERS play symbols matching to either MUCHO DINERO NUMBER play symbol.

I. The "DOLLAR BILL" (win all) play symbol and "STAR" (auto win) play symbol will never appear together on a ticket.

J. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MUCHO DINERO" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MUCHO DINERO" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MUCHO DINERO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MUCHO DINERO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MUCHO DINERO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1078. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1078 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	693,840	10.20
\$4	580,560	12.20
\$5	84,960	83.33
\$10	99,120	71.43
\$20	42,480	166.67
\$50	29,618	239.04
\$100	11,328	625.00
\$500	790	8,962.03
\$2,000	30	236,000.00
\$20,000	8	885,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1078 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1078, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200803055

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 13, 2008



Instant Game Number 1079 "3 of a Kind"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1079 is "3 OF A KIND". The play style is "3 of a kind of 5 cards with bonus".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1079 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1079.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2 CARD SYMBOL, 3 CARD SYMBOL, 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$300, \$500, \$2,000, \$50,000, DIAMOND SYMBOL, SPADE SYMBOL, CLUB SYMBOL and HEART SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1079 - 1.2D

PLAY SYMBOL	CAPTION
2 CARD SYMBOL	TWO
3 CARD SYMBOL	THR
4 CARD SYMBOL	FOR
5 CARD SYMBOL	FIV
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SVN
8 CARD SYMBOL	EGT
9 CARD SYMBOL	NIN
10 CARD SYMBOL	TEN
J CARD SYMBOL	JCK
Q CARD SYMBOL	QUN
K CARD SYMBOL	KNG
A CARD SYMBOL	ACE
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$300	THR HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$50,000	50 THOU
DIAMOND SYMBOL	DIMND
SPADE SYMBOL	SPADE
CLUB SYMBOL	CLUB
HEART SYMBOL	HEART

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100 or \$300.

H. High-Tier Prize - A prize of \$2,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1079), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 1079-0000001-001.

K. Pack - A pack of "3 OF A KIND" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "3 OF A KIND" Instant Game No. 1079 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "3 OF A KIND" Instant Game is determined once the latex on the ticket is scratched off to expose 39 (thirty-nine) Play Symbols. The player must scratch the YOUR HANDS play area. If the player reveals 3 (three) matching cards in any one HAND, the

player wins the PRIZE shown for that HAND. The player must also scratch the BONUS GAME play area. If YOUR SUIT matches the DEALER'S SUIT, the player wins the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 39 (thirty-nine) Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 39 (thirty-nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 39 (thirty-nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 39 (thirty-nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No four or more matching non-winning YOUR HANDS play symbols on a ticket.

C. No duplicate non-winning YOUR HANDS on a ticket in any order.

D. No duplicate non-winning prize symbols on a ticket.

E. Winning prize amounts will never match non-winning prize amount(s).

F. No four or more matching card symbols within a HAND.

G. No HAND will contain a full house or a straight.

2.3 Procedure for Claiming Prizes.

A. To claim a "3 OF A KIND" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$30.00, \$50.00, \$100 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "3 OF A KIND" Instant Game prize of \$2,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "3 OF A KIND" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission,

Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "3 OF A KIND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "3 OF A KIND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1079. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1079 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	537,600	9.38
\$10	504,000	10.00
\$15	67,200	75.00
\$20	84,000	60.00
\$30	67,200	75.00
\$50	50,400	100.00
\$100	3,150	1,600.00
\$300	1,764	2,857.14
\$2,000	420	12,000.00
\$50,000	10	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1079 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1079, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200803124
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 18, 2008



Instant Game Number 1080 "Super Match 3"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1080 is "SUPER MATCH 3". The play style is "slots-straight line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1080 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1080.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: DIAMOND SYMBOL, STAR SYMBOL, BANANA SYMBOL, BELL SYMBOL, WATERMELON SYMBOL, POT OF GOLD SYMBOL, HORSE SHOE SYMBOL, DOLLAR SIGN SYMBOL, GRAPE SYMBOL, SEVEN SYMBOL, CHERRY SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1080 - 1.2D

PLAY SYMBOL	CAPTION
DIAMOND SYMBOL	DMD
STAR SYMBOL	STR
BANANA SYMBOL	BNA
BELL SYMBOL	BEL
WATERMELON SYMBOL	MEL
POT OF GOLD SYMBOL	GLD
HORSE SHOE SYMBOL	HSH
DOLLAR SIGN SYMBOL	DLR
GRAPE SYMBOL	GRP
SEVEN SYMBOL	SVN
CHERRY SYMBOL	CHY
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.00.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1080), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1080-0000001-001.

K. Pack - A pack of "SUPER MATCH 3" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements

of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPER MATCH 3" Instant Game No. 1080 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUPER MATCH 3" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) Play Symbols. If a player reveals three matching play symbols within a GAME, the player wins PRIZE shown for that GAME. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the latex over-print on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 20 (twenty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
- B. No duplicate non-winning prize symbols on a ticket.
- C. No duplicate non-winning games on a ticket (in any order).
- D. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- E. There will be many near wins (two matching symbols within a game) on a ticket.
- F. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER MATCH 3" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100.00, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$40.00 or \$100.00 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER MATCH 3" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER MATCH 3" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SUPER MATCH 3" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SUPER MATCH 3" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1080. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1080 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	638,400	15.79
\$2	940,800	10.71
\$4	252,000	40.00
\$5	67,200	150.00
\$10	67,200	150.00
\$20	33,600	300.00
\$40	16,800	600.00
\$100	840	12,000.00
\$1,000	84	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 5.00. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1080

without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1080, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200803056

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 13, 2008



Instant Game Number 1087 "Winning Chips"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1087 is "WINNING CHIPS". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1087 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1087.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 2X SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$2,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1087 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
2X	WINX2
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1087), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1087-0000001-001.

K. Pack - A pack of "WINNING CHIPS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WINNING CHIPS" Instant Game No. 1087 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WINNING CHIPS" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR CHIPS play symbols to either WINNING CHIP play symbol, the player wins the PRIZE shown for that CHIP. If a player reveals a "2X" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "2X" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No three or more matching non-winning prize symbols on a ticket.

D. No duplicate WINNING CHIPS play symbols on a ticket.

E. No duplicate non-winning YOUR CHIPS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR CHIPS play symbol (i.e. 5 and \$5).

H. The top prize will appear at least once on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "WINNING CHIPS" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified

promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WINNING CHIPS" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WINNING CHIPS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WINNING CHIPS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WINNING CHIPS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1087. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1087 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	509,760	13.89
\$4	679,680	10.42
\$5	84,960	83.33
\$10	99,120	71.43
\$20	42,480	166.67
\$50	29,500	240.00
\$100	11,210	631.58
\$500	950	7,452.63
\$2,000	15	472,000.00
\$20,000	5	1,416,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.86. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1087 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1087, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200803101
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 17, 2008



North Central Texas Council of Governments

Request for Proposals to Conduct the Fort Worth Transportation Authority and Denton County Transportation Authority On-Board Transit Survey

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to conduct the Fort Worth Transportation Authority (FWTA) and Denton County Transportation Authority (DCTA) On-Board Transit Survey. The purpose of the survey is to provide updated commuter travel information to

NCTCOG's Dallas-Fort Worth Regional Travel Model (DFWRTM). The DFWRTM is the travel demand model for the Dallas-Fort Worth area which is responsible for making transit forecasts based on travel demand patterns identified in this survey. This data collection effort is one of many steps in NCTCOG's efforts to update the data for the DFWRTM. Having recent commuter information is necessary when transit agencies evaluate potential projects and make applications for New Starts funding to the Federal Transit Administration (FTA). The FTA has a very competitive national comparative process for transit projects. It is expected that the consultant team will collect this data to comply with the latest FTA guidelines for conducting transit surveys. Innovative approaches in data collection, expansions, coding, and analyses are encouraged.

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, July 25, 2008 to Kathy Yu, Senior Transportation System Modeler, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally As-

sisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200803114

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: June 17, 2008



Public Utility Commission of Texas

Notice of Application for Review of the Cost of Decommissioning Units 1 and 2 of the South Texas Project

Notice is given to the public of an application for review of the cost of decommissioning Units 1 and 2 of the South Texas Project filed with the Public Utility Commission of Texas on June 13, 2008, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 39.205 (Vernon 2007 & Supp. 2007) (PURA).

Docket Style and Number: Application of NRG South Texas, LP for Review of the Cost of Decommissioning Units 1 and 2 of the South Texas Project, Docket Number 35772.

The Application: NRG South Texas, LP (NRG) filed an application for approval of the proposed annual funding analysis for the cost of decommissioning South Texas Project Electric Generating Station (STP) Units 1 and 2, as specifically allocated to (1) the decommissioning master trust created for NRG's 30.8% ownership interest in STP Units 1 and 2, for which CenterPoint Energy Houston Electric LLC is the collecting utility; and (2) the decommissioning master trust created for NRG's 13.2% ownership interest in STP Units 1 and 2, for which American Electric Power Texas Central Company is the collecting utility. Also included in its application, NRG provided a description of the proposed allocation of a portion of the existing and future funds in the nuclear decommissioning trusts to the spent fuel management subaccounts for each trust.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 35772.

TRD-200803109

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 17, 2008



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on June 16, 2008, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 and §37.154 (Vernon 2007 & Supp. 2007) (PURA).

Docket Style and Number: Joint Application of AEP Texas Central Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of Facilities in Nueces County, Docket Number 35784.

The Application: This transaction involves the transfer of facilities from AEP Texas Central Company to LCRA Transmission Services Corporation. The transmission facilities proposed for transfer are (1) the rebuilt 69-kV line from the Airline Substation to the Laguna Substation; and (2) the rebuilt 69-kV line from the Airline Substation to the Naval Base Substation, both located in the City of Corpus Christi and Nueces County.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All correspondence should refer to Docket Number 35784.

TRD-200803105

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 17, 2008



Notice of Application to Amend Certificated Service Area Boundaries in Hays County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 12, 2008, for an amendment to certificated service area boundaries for an electric service area exception within Hays County, Texas.

Docket Style and Number: Application of Bluebonnet Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception within Hays County. Docket Number 35764.

The Application: Bluebonnet Electric Cooperative, Inc. (Bluebonnet) filed an application for a service area boundary exception to allow Bluebonnet to provide service to a specific customer located within the certificated service area of Pedernales Electric Cooperative, Inc. (PEC). PEC has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 8, 2008 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35764.

TRD-200803149

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 18, 2008



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on June 12, 2008, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or after June 23, 2008.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for ISDN PRI One-Year Term and Volume Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 35766.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 35766. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35766.

TRD-200803104

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 17, 2008

◆ ◆ ◆
Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of North Texas Telephone Company (North Texas Telephone) application filed with the Public Utility Commission of Texas (commission) on June 13, 2008, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Statement of Intent of North Texas Telephone Company to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171; Tariff Control Number 35776.

The Application: North Texas Telephone filed an application to implement a minor rate change to the services for the monthly 1-Party Local Exchange Access Lines and the Rotary Multi-Line Hunt Service rates for business and residence customers. The proposed effective date for the proposed rate changes is October 1, 2008. The estimated annual revenue increase recognized by North Texas Telephone is \$12,899.80 or less than 5% of North Texas Telephone's gross annual intrastate revenues. North Texas Telephone has 740 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by August 30, 2008, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by August 30, 2008. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 35776.

TRD-200803107

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 17, 2008

◆ ◆ ◆
Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Comanche County Telephone Company (Comanche County Telephone) application filed with the Public Utility Commission of Texas (commission) on June 13, 2008, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Statement of Intent of Comanche County Telephone Company to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171; Tariff Control Number 35777.

The Application: Comanche County Telephone filed an application to implement a minor rate change to the monthly 1-Party Local Exchange Access Line rates for residence and business customers; the business Rotary Service and PBX Trunk rates; and Directory Assistance Service charges. The Company also proposes to eliminate the three-call monthly allowance for local Directory Assistance calls; add a new service description for clarification regarding its Rotary Multi-Line Hunt Service; and offer a new Caller ID Service - Calling Name and Number Delivery feature. The proposed effective date for the proposed rate changes is October 1, 2008. The estimated annual revenue increase recognized by Comanche County Telephone is \$87,465.63 or less than 5% of Comanche County Telephone's gross annual intrastate revenues. Comanche County Telephone has 4,638 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by August 30, 2008, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by August 30, 2008. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 35777.

TRD-200803108

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 17, 2008

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Request for Proposals: Consulting Expert Services Concerning the Installation and Use of Combined Heating and Power Technology in Texas

The Public Utility Commission of Texas (PUCT or commission) is issuing a Request for Proposals (RFP) for a person or entity to provide consulting services to study and submit a report on the installation and use of combined heating and power technology in Texas in connection with House Bill (HB) 3693, §39.912.

Under the direction of a PUCT staff program manager, the Contractor will perform the following services:

The study shall evaluate the installation and use of combined heating and power technology in Texas. Specifically, the study shall provide information on the following topics:

(1) an explanation describing combined heating and power technology and its use, including:

(i) current installations of combined heating and power technologies in Texas and their uses;

(ii) a summary of the technology and fuel sources used for combined heating and power;

(iii) the potential for economical combined heating and power in Texas;

(iv) the costs of combined heating and power, the benefits to the owner or operator, and the benefits to others; and

(2) an explanation of how combined heating and power technology can be implemented in Texas to meet energy efficiency goals, including:

(i) barriers to the use of combined heating and power; and

(ii) policy options available to foster the adoption of combined heating and power.

RFP documentation may be obtained by contacting:

Purchaser

Public Utility Commission of Texas

P.O. Box 13326

Austin, Texas 78711-3326

(512) 936-7069

purchasing@puc.state.tx.us

RFP documentation also is located on the PUCT website at <http://www.puc.state.tx.us/about/procurement/currentrfps.cfm>.

Deadline for submission is 5:00 p.m. on Tuesday, July 22, 2008.

TRD-200803151

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 18, 2008

School Land Board

Notice of Public Meeting Concerning Proposed Lease to Port Freeport

The School Land Board of the State of Texas invites the public to a hearing to be held by its designated representatives to receive public comments regarding the proposed lease of state-owned submerged land for the dredging and filling required to construct the Berth 7 terminal by Port Freeport pursuant to Texas Water Code §61.116.

The hearing will be held on July 23, 2008 at Freeport Community House, 1300 W. 2nd Street, Freeport, Texas commencing at 6:00 p.m. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the proposed lease. Please contact Tony Williams at the General Land Office at (512) 463-5055 for documents or other information relating to the proposed lease.

TRD-200803156

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

School Land Board

Filed: June 18, 2008

Texas State Technical College System

Invitation to Bid

ERP System Performance Analysis and Design Services

Invitation to Bid (ITB) Number: SLR062708

The Texas State Technical College (TSTC) System intends to enter into a contract with a consultant to provide ERP system performance analysis and design services. The consultant will study, monitor and research the current Datatel Colleague Student Information and Financial Accounting System (Colleague) hardware and software environment and make recommendations for future migrating from IBM Unidata DBMS platform to Microsoft SQL Server or Oracle database platform.

The consultant will also analyze the current production hardware and application platform during an upcoming peak-load period (fall open student enrollment) to identify bottlenecks and other issues and make recommendations for improving overall system performance.

The CEO of TSTC System, Chancellor Bill Segura, finds that these consulting services are necessary. While TSTC System has many capacities for conducting studies and research into our operations, however the task involves resources that are not readily available to us, namely, trained and qualified systems performance analysts and design expert to successfully accomplish the task.

In the past, TSTC has contracted with Sysix Technologies for this type of service and have been very pleased with the company's work. Sysix is an Illinois-based company with offices in Texas. Sysix is also a Datatel partner (www.datatel.com) and do similar projects for Datatel clients like TSTC. Unless better offers are received, it is the intention of the TSTC System to award the contract for these services to Sysix Technologies.

The contract will be awarded based on an evaluation of the offers. Criteria will include: 1) prior experience with TSTC; 2) consultant's resources and expertise; 3) suitability of consultant's plan of work; 4) time required for conducting the services; and 5) reasonableness of price.

Deadline for the receipt of offers is 2:00 p.m. Monday, July 28, 2008. Send three copies of offer to:

April Strickland

Purchasing Department

Texas State Technical College Waco

3801 Campus Drive

Waco, Texas 76705

Email: April.L.Strickland@tstc.edu

For more information, please contact:

Sammy L. Rhodes

Associate Vice Chancellor and Chief Information Officer

Texas State Technical College System

3801 Campus Drive

Waco, Texas 76705

Email: sammy.rhodes@systems.tstc.edu

TRD-200803150

Sammy L. Rhodes

Associate Vice Chancellor and Chief Information Officer

Texas State Technical College System

Filed: June 18, 2008

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Monahans, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Roy Hurd Memorial Airport during the course of the next five years through multiple grants.

Current Project: City of Monahans. TxDOT CSJ No.: 0806MONHN. Rehabilitation of runways and taxiway at the Roy Hurd Memorial Airport.

There is no DBE goal set for this project. TxDOT Project Manager is Clayton Bridwell.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate and mark Runway 12 - 30, Runway 1 - 19, taxiways and apron
2. Install runway end identifier lights Runway 12 - 30
3. Install PAPI - 2 Runway 30

The City of Monahans reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Roy Hurd Memorial Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at www.txdot.gov/services/aviation/consultant.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format.

The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than July 17, 2008, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff and one local government member. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at <http://www.txdot.gov/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Clayton Bridwell, Project Manager at (512) 416-4531.

TRD-200803050

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: June 12, 2008

Notice of Implementation of Database Relating to Temporary Cardboard Tags on Vehicles

The Texas Department of Transportation adopted rules on March 27, 2008 (see April 11, 2008, issue of the *Texas Register* (33 TexReg 2964)) relating to temporary cardboard tags pursuant to Article 8 of Senate Bill 11 and Senate Bill 1786, 80th Legislature, Regular Session, 2007. The bills require the department to create and maintain databases that allow for real time access to owner information on recently sold vehicles or vehicles operated under other temporary tags. The system must be capable of generating a vehicle-specific number for the issuance of dealer, buyer's, and converter temporary tags.

Adopted rule 43 TAC §8.153 requires dealers and converters to begin using the new tags on the date that the database system is made generally available for use by the department. Section 8.153 further indicates that the department will provide dealers access to the database for review at least 60 days before the requirement to use the system for the issuance of temporary tags. The section requires the department to notify dealers through the *Texas Register* of the dates that the system is available for review and the date that all dealers must begin to use the new system.

The system is currently available for review. To access the system, dealers must register their email addresses with the department and receive a password. The department sent a letter to all dealers on May 8, 2008, providing a control number with which to register their email addresses. Dealers who have not registered their email addresses can not receive credentials authorizing database access until the registration is complete.

Dealers who have not received the letter with a control number for each license number held should email the Motor Vehicle Division Help Desk at: MVD_Contact@dot.state.tx.us. The subject line of the email should be "No Control Number Received." Dealers should provide their business name and license number as well as pertinent contact information in the body of the email.

Compliance with the new temporary tag database will be mandatory on September 1, 2008.

Additional information regarding e-Tags and the new temporary tag rules can be found on the **www.txdot.gov** website. Click on "Vehicle

Dealer Services" under the Business column to access the Motor Vehicle Division homepage for more information on e-Tags.

TRD-200803103

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: June 17, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).